FILE COPY

Office - Supreme Court, U.S.
FILED
MAR 30 1937
CHARLES ELMORE CROPLEY
CLERK

No. 659

In the Supreme Court of the United States

OCTOBER TERM, 1936

THE CINCINNATI SOAP COMPANY, A CORPORATION UNDER THE LAWS OF OHIO, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinion Below	1
Jurisdiction	1
Question Presented	2
Statutes and Other Material Involved	2
Statement	2
Summary of Argument	4
Argument	9
I. The Tax Here Imposed Does Not Violate the Tenth Amendment	10
A. The act is not regulatory	10
B. The motives which inspired Congress to pass the tax are immaterial	13
C. In any event, even if the motives of Congress be considered, they do not invalidate the tax	20
II. The Act Does Not Violate the Fifth Amendment	26
III. The Validity of the Tax Is Not Affected by the Provisions Earmarking the Proceeds of the Tax to the Treasury of the Philippine Islands	35
A. Congress has full power to appropriate these funds for the support of the Philippine Islands	36
1. If it be assumed, *arguendo*, that the provision directing payment to the Islands was inserted for the purpose of discharging a moral obligation, the payment for such a purpose is within the power of Congress	37
2. Prior to the establishment of the present commonwealth government of the Philippines, the United States had full power to appropriate money for the benefit of the Islands	39
3. The institution of the commonwealth government in the Philippine Islands has not changed the power of Congress to appropriate funds to the Insular Treasury	49
4. Even assuming, *arguendo*, that the Philippine Islands are a foreign country, nevertheless, the appropriation would be valid	57
B. In any event the provision authorizing the appropriation to the Philippines of the proceeds of the tax is separable	58
Conclusion	61
Appendix	62

CITATIONS

Cases:

	Page
Alaska Fish Co. v. *Smith*, 255 U. S. 44	14, 20, 22
Alexander Theatre Ticket Office v. *United States*, 23 F. (2d) 44	20
Alston v. *United States*, 274 U. S. 289	14
American Ins. Co. v. *Ganter*, 1 Pet. 511	40
Asiatic Petroleum Co. v. *Collector of Customs*, 297 U. S. 666	45, 52, 54
Billings v. *United States*, 232 U. S. 261	14, 26
Binns v. *United States*, 194 U. S. 486	45
Board of Trustees v. *United States*, 289 U. S. 48	19
Brushaber v. *Union Pac. R. R.*, 240 U. S. 1	5, 26
Carley & Hamilton v. *Snook*, 281 U. S. 66	32
Carter v. *Carter Coal Co.*, 298 U. S. 238	59
Cherokee National v. *Georgia*, 5 Pet. 1	53
Child Labor Tax Case, 259 U. S. 20	11, 25
Citizens' Telephone Co. v. *Fuller*, 229 U. S. 322	13
Cook v. *Pennsylvania*, 97 U. S. 566	24
Crew Levick Co. v. *Pennsylvania*, 245 U. S. 292	24
Crocker v. *Malley*, 249 U. S. 223	20
De Lima v. *Bidwell*, 182 U. S. 1	40
Donovan v. *Pennsylvania Co.*, 199 U. S. 279	33
Dorr v. *United States*, 195 U. S. 138	40
Downes v. *Bidwell*, 182 U. S. 244	5, 15, 31, 32, 40, 47, 49
Field v. *Clark*, 143 U. S. 649	60
Fourteen Diamond Rings v. *United States*, 183 U. S. 176	39
Fox v. *Standard Oil Co.*, 294 U. S. 87	14
Green v. *Frazier*, 253 U. S. 233	33
Grosjean v. *American Press Co.*, 297 U. S. 233	12
Hampton & Co. v. *United States*, 276 U. S. 394	4, 5, 14, 18, 21, 22
Head Money Cases, 112 U. S. 580	28, 60
Heiner v. *Donnan*, 285 U. S. 312	26
Helvering v. *City Bank Co.*, 296 U. S. 85	26
Hill v. *Wallace*, 259 U. S. 44	12, 25
Illinois C. R. Co. v. *Decatur*, 147 U. S. 190	32
Jones v. *City of Portland*, 245 U. S. 217	33
Jones v. *United States*, 137 U. S. 202	53
Knights v. *Jackson*, 260 U. S. 12	29
In re Kollock, 165 U. S. 526	14
Luther v. *Borden*, 7 How. 1	8, 58
Magnano Co. v. *Hamilton*, 292 U. S. 40	14, 20, 26, 33
McCray v. *United States*, 195 U. S. 27	4, 14, 19, 26
McKenna v. *Anderson*, 31 F. (2d) 1016, certiorari denied, 279 U. S. 869	20
Milheim v. *Moffat Tunnel Dist.*, 262 U. S. 710	33
Millard v. *Roberts*, 202 U. S. 429	34

Cases—Continued.

	Page
Mountain Timber Co. v. *Washington*, 243 U. S. 219	58
Nashville, C. & St. L. Ry. v. *Wallace*, 288 U. S. 249	32
National Life Ins. Co. v. *United States*, 277 U. S. 508	60
Neely v. *Henkel (No. 1)*, 180 U. S. 109	53
Nichols v. *Coolidge*, 274 U. S. 531	26
Nigro v. *United States*, 276 U. S. 332	14
Olcott v. *The Supervisors*, 16 Wall. 678	33
Pacific Fisheries v. *Alaska*, 269 U. S. 269	13
Patton v. *Brady*, 184 U. S. 608	29
Phila. Steamship Co. v. *Pennsylvania*, 122 U. S. 326	24
Pine Grove v. *Talcott*, 19 Wall. 666	33
Posadas v. *National City Bank*, 296 U. S. 497	39
Quong Wing v. *Kirkendall*, 223 U. S. 59	14
Rast v. *Van Deman & Lewis*, 240 U. S. 342	13
Rex v. *Jacobus Christian*, South African L. R. (1924) App. Div. 101	52
Robbins v. *Shelby Taxing District*, 120 U. S. 489	24
Russian Volunteer Fleet v. *United States*, 282 U. S. 481	38
Southwestern Oil Co. v. *Texas*, 217 U. S. 114	14
Tax Commissioners v. *Jackson*, 283 U. S. 527	14
Terlinden v. *Ames*, 184 U. S. 270	58
Treat v. *White*, 181 U. S. 264	14
Twin City Bank v. *Nebeker*, 167 U. S. 196	34
United States v. *Butler*, 297 U. S. 1	9, 12, 19, 34, 56, 60
United States v. *Constantine*, 296 U. S. 287	12, 25
United States v. *Curtiss-Wright Export Corp.*, decided December 21, 1936	5, 24, 41, 48, 57
United States v. *Doremus*, 249 U. S. 86	14, 19
United States v. *Kagama*, 118 U. S. 375	40
United States v. *Midwest Oil Co.*, 236 U. S. 459	48
United States v. *Realty Co.*, 163 U. S. 427	7, 38
Untermyer v. *Anderson*, 276 U. S. 440	26
Utah Power & Light Co., v. *Pfost*, 286 U. S. 165	59
Veazie Bank v. *Fenno*, 8 Wall. 533	14, 19
Ware v. *Hylton*, 3 Dall. 199	52
Welton v. *State of Missouri*, 91 U. S. 275	24
Williams v. *Standard Oil Co.*, 278 U. S. 235	59
Williams v. *Suffolk Insurance Co.*, 13 Pet. 414	53
Wisconsin &c. R'd. Co. v. *Jacobson*, 179 U. S. 287	33

Statutes:

Act of March 3, 1791, c. 15, 1 Stat. 199	31
Act of May 8, 1792, c. 32, 1 Stat. 267	31
Act of March 26, 1804, c. 46, 2 Stat. 291	31
Act of February 22, 1883, c. 51, 22 Stat. 421	57
Act of December 21, 1895, c. 1, 29 Stat. 1	57
Act of June 11, 1896, c. 420, 29 Stat. 413	57

Statutes—Continued. Page

Act of March 8, 1902, c. 140, 32 Stat. 54, Sec. 4 (U. S. C., Title 19, Sec. 123a) 31, 46
Act of August 5, 1909, c. 6, 36 Stat. 11 ..... 31, 36
Act of October 3, 1913, c. 16, 38 Stat. 114 ..... 31, 47
Act of March 30, 1920, c. 113, 41 Stat. 548 57
Act of September 21, 1922, c. 356, 42 Stat. 858, Sec. 1, par. 82 ..... 23, 31, 48
Act of April 23, 1924, c. 131, 43 Stat. 108 32
Act of June 17, 1930, c. 497, 46 Stat. 590:
Sec. 1 (U. S. C., Title 19, Sec. 1001) 23
Sec. 301 (U. S. C., Title 19, Sec. 1301) 31, 48
Act of July 10, 1935, c. 376, 49 Stat. 478 45
Foraker Act of April 12, 1900, c. 191, 31 Stat. 77 31
Jones Act of 1916, c. 416, 39 Stat. 545 50
Liquor Tax Act of December 21, 1844, c. 15, 3 Stat. 132 31
Organic Act of 1902, c. 1369, 32 Stat. 691 50
Permanent Appropriation Repeal Act of June 26, 1934, c. 756, 48 Stat. 1224, Sec. 20 (U. S. C., Title 31, Sec. 725s) 28
Philippine Independence Act of March 24, 1934, c. 84, 48 Stat. 456:
Sec. 2 (U. S. C., Title 48, Sec. 1232) 51, 54, 55
Sec. 6 (U. S. C., Title 48, Sec. 1236) 37, 54
Sec. 7 (U. S. C., Title 48, Sec. 1237) 51
Sec. 10 (U. S. C., Title 48, Sec. 1240) 51
Revenue Act of 1917, c. 159, 39 Stat. 1000, Titles II & III 32
Revenue Act of 1934, c. 277, 48 Stat. 680:
Sec. 602½ (U. S. C., Title 26, Sec. 999) 62
Sec. 802 65
Tariff Act of May 2, 1792, c. 27, 1 Stat. 259 31
Tariff Act of March 3, 1797, c. 10, 1 Stat. 503 31
Tariff Act of May 13, 1800, c. 66, 2 Stat. 84 31

State Constitutions:
Iowa Constitution, Art. VII, Sec. 7 30
Michigan Constitution, Art. X, Sec. 6 30
New York Constitution, Art. III, Sec. 24 30

Miscellaneous:
Annual Report of the Commissioner of Internal Revenue for the fiscal year ended June 30, 1936, p. 22 11
Annual Report of the Governor General (1935), pp. 11, 41–49 46
Annual Report of the Governor of Porto Rico (1931), pp. 10, 20, 79–80 44
1 Blackstone, Commentaries, p. 330 30
Confidential Hearings before the Committee on Finance of the Senate on H. R. 7835, Part 1, p. 3, Part 5, p. 170 15
Cong. Rec. Vol. 78, Part 6:
Pages 6308–6325, 6380–6389 ..... 54, 58
Pages 6311, 6317 37
Pages 6329, 6331 55

Miscellaneous—Continued.

Constitution of the Philippine Islands: Page

Art. XVI, Sec. 1 66

Art. XVII, Sec. 1 51, 67

Ordinance Appended to the Constitution:

Sec. 1 51, 67

Sec. 2 70

Sec. 3 71

Constitution of the United States:

Art. I, Sec. 8, Clause 1 29, 33, 38, 49

Art. I, Sec. 9, Clause 7 27

Art. I, Sec. 10, Clause 2 24

Art. IV, Sec. 3, Clause 2 39

Foreign Relations of the United States (1905), p. 343 57

Foreign Relations of the United States (1912), p. 997 57

Foreign Relations of the United States (1920), pp. 49–128 57

Hacker & Hendrick, The United States Since 1865 (1936), p. 390 54

Hague Court Reports (2d Ser., Scott), p. 93 52

Hall, International Law (7th ed.), p. 17 52

Hearings before the House Committee on Ways and Means, Revenue Reviston, 1934, 73d Cong., 2d Sess., p. 579 14, 15

Hearings before the Senate Committee on Finance, 73d Cong., 2d Sess., on H. R. 7835 15

6 Holdworth's History of the English Law, p. 253 30

H. Conference Report No. 1385, 73d Cong., 2d Sess., p. 30 14, 15

House Document No. 400, 74th Cong., 2d Sess., pp. 1, 5–24, 24, 30, 70, 73 50, 52, 53

H. Rep. No. 704, 73d Cong., 2d Sess., p. 41 14

Moore, International Law Digest (1906), Vol. I, p. 18:

Pages 809, 811, 835 57

Page 18 52

Note to the Minister of the Union of South Africa, dated November 15, 1935 53, 71

34 Op. Atty. Gen. 287 39

Report of the Director of the National Park Service (1932), p. 90 43

Report of the Governor General of the Philippine Islands (1932), p. 35 47

Report of the Select Committee on the Budget of the House of Representatives (H. Rep. No. 14, 67th Cong., 1st Sess.) 29

Seligman, Essays on Taxation (1895 ed.), pp. 345–349 30

S. Doc. No. 60, 61st Cong., 2d Sess., p. 3 57

S. Rep. No. 558, 73d Cong., 2d Sess., p. 52 14

Story, Commentaries on the Constitution (5th ed.), Sec. 965 20

Miscellaneous—Continued. Page

Stuart, Latin America and the United States (2d ed., 1929), p. 266 57

Supplemental Treaty with Spain, 31 Stat. 1942 39

Treaty of Paris, 30 Stat. 1775, Art. III 39

Treaty with Colombia proclaimed March 30, 1922, 42 Stat. 2122 57

United States-Philippine Tariff and Trade Relations (U. S. Tariff Comm., 1931), p. 121 48

United States-Philippine Trade (U. S. Tariff Commission, 1937), pp. 87, 88, 89, 168 ..... 16, 55

In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 659

THE CINCINNATI SOAP COMPANY, A CORPORATION UNDER THE LAWS OF OHIO, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court (R. 23) is not reported.

JURISDICTION

The order of the District Court was entered on January 5, 1937 (R. 22). An appeal was prayed for in the Circuit Court of Appeals for the Sixth Circuit on January 5, 1937 (R. 24), and was allowed on the same day (R. 25). A petition for a writ of certiorari was filed in this Court prior to hearing or submission of the appeal in the Circuit

Court of Appeals, and was granted on February 15, 1937 (R. 31). The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether Section 602½ (a) of the Revenue Act of 1934, imposing a tax of three cents per pound upon the processing of Philippine coconut oil, is a valid exercise of the taxing power of Congress.

STATUTES AND OTHER MATERIAL INVOLVED

Section 602½ of the Revenue Act of 1934, c. 277, 48 Stat. 680, and relevant sections of the Constitution of the Philippine Islands are set forth in the Appendix, *infra*, pp. 61–72.

STATEMENT

On July 6, 1936, the Cincinnati Soap Company, petitioner herein, filed a petition at law in the United States District Court for the Southern District of Ohio (R. 1), praying recovery against respondent in the sum of $995.85. On September 28, 1936, an amended petition was filed (R. 17–21). On October 9, 1936, respondent filed a demurrer to the petition, as amended, on the ground that the petition, as amended, failed to state a cause of action (R. 21–22). The allegations of the petition, as amended, which are admitted by the demurrer, may be summarized as follows:

The Cincinnati Soap Company is a corporation under the laws of the State of Ohio, with its prin-

cipal office and place of business at Cincinnati, Ohio (R. 1). It is now, and has for many years, been engaged in the business of manufacturing toilet and other soaps at its manufacturing plant at Dayton, Ohio (R. 3).

During the month of January 1935, petitioner used in manufacturing soap 33,195 pounds of coconut oil, wholly the production of the Philippine Islands. Pursuant to Section 602½ of the Revenue Act of 1934, *infra*, pp. 61–64, petitioner filed a return and paid to the respondent a tax of three cents per pound on the processing of this oil. The total amount of this tax was $995.85 (R. 2). On January 7, 1936, petitioner filed with the Bureau of Internal Revenue its claim for the refund of the tax upon the ground that it was unconstitutional (R. 2, 13–14). The claim was denied by the Commissioner of Internal Revenue on May 14, 1936.[1] An amended claim was filed on July 6, 1936, and denied by the Commissioner of Internal Revenue on July 28, 1936 (R. 17).

On January 5, 1937, the District Court entered an order sustaining the demurrer and entered judg-

[1] The petition contains further allegations with respect to the use of coconut oil in the manufacture of plaintiff's soap (R. 3, 5), the mode by which coconut oil is transported from the Philippine Islands to its plant (R. 3–4), the details of the history of the Philippine Independence Act and the proceedings thereunder (R. 5–6), as well as many legal conclusions as to the invalidity of the tax (R. 6–10). To the extent that these further allegations are material, they are referred to in the argument, *infra*.

ment for respondent (R. 22). A petition for an appeal was filed and allowed on January 5, 1937 (R. 24, 25). Before argument or submission of the case in the Circuit Court of Appeals a petition for a writ of certiorari was filed and was allowed on February 15, 1937 (R. 31).

SUMMARY OF ARGUMENT

I

A. Section 602½ of the Revenue Act of 1934 imposes a valid tax on the processing of Philippine coconut oil. The tax does not violate the Tenth Amendment. The act is not regulatory in any way, either in the incidence of the tax or in the expenditure of the proceeds, but, on the contrary, is designed to and does operate simply as a tax-producing revenue measure.

B. The motives which inspired Congress to pass the tax are immaterial, whether or not they may be inferred from the face of the act. *Hampton & Co.* v. *United States,* 276 U. S. 394; *McCray* v. *United States,* 195 U. S. 27. It is the settled doctrine of this Court that a non-fiscal purpose will not invalidate an act, as long as Congress has sought to achieve that purpose merely through the levy and collection of a tax, which is intended to and does raise revenue, and has not attempted to achieve it by the exercise, in the guise of a taxing act, of some different power not possessed.

C. Moreover, even if the non-fiscal motive of Congress be deemed material, the motive here was

protection of domestic producers from competition from sources outside continental United States in furtherance of the tariff policy, and this is a valid purpose for the exercise of the Federal taxing power. *Hampton & Co.* v. *United States,* 276 U. S. 394. The Constitution specifically deprives the states of the power of granting this protection and vests authority over that entire field in Congress. Cf. *United States* v. *Curtiss-Wright Export Corp.,* No. 98, decided December 21, 1936. Consequently, when Congress exercises its powers for the purpose of affording that protection, it cannot be said that Congress is attempting to invade a field reserved to the states by the Tenth Amendment.

II

The act does not violate the Fifth Amendment. The tax is not retroactive and contains no arbitrary provisions. *Brushaber* v. *Union Pacific R. R.,* 240 U. S. 1, 24. The Fifth Amendment is not violated by the fact that the purpose to which the proceeds are to go is stated in the taxing act, as long as that purpose is proper under the Constitution. *Downes* v. *Bidwell,* 182 U. S. 244. There is no violation of the constitutional requirement regarding appropriations, since this money is paid into a trust fund in the Treasury, from whence it is paid under regular appropriation acts.

For many years, taxes have been imposed in this country on products coming from insular possessions, the proceeds of which have been earmarked

for those possessions, and this Court has specifically upheld those taxes. *Downes* v. *Bidwell*, 182 U. S. 244. A tax is no less a revenue measure because imposed to raise revenue for a specific purpose. Nor is it necessary that a particular taxpayer receive a direct benefit from the use of the money for that purpose, as long as it is a proper governmental purpose which has as its object the welfare of all. If, however, direct benefit were necessary, petitioner, being dependent upon oil from the Philippines, is directly benefited by the expenditure of money to assist in maintaining a stable government in those Islands.

III

Petitioner, to demonstrate the invalidity of the instant tax because of the provisions for payment of the proceeds to the Philippine Islands, must demonstrate two propositions: (A) That such an appropriation of funds would be invalid; *and* (B) that the earmarking is inseparable from the tax. We submit that neither proposition can be supported.

A

1. Assuming, as petitioner insists, that the provision for payment of the proceeds of this tax to the Philippine Islands was inserted in order to discharge a moral obligation arising from an alleged breach of the Philippine Independence Act, nevertheless the provision is clearly constitutional. This Court has held that Congress has the power

to recognize and authorize the payment of moral obligations of the United States. *United States* v. *Realty Co.*, 163 U. S. 427, 440.

2. The Philippines were acquired by the United States and became a territorial possession under the power of Congress. Having thus acquired the Islands, Congress was authorized by the Constitution to take whatever measures were necessary to promote their welfare. From the beginning of our government Congress has exercised the power of appropriation for the benefit of various territorial possessions, and has never assumed that the Philippine Islands were to be considered as in a separate class. The fact that the Islands have been largely self-supporting is material only with respect to the *need* for financial assistance, and not with respect to the *power* of Congress to render it if necessary.

Indeed, a series of statutes, beginning with the Act of March 8, 1902, are almost identical with the present act. Those statutes have been continuously in effect since that time, and under them payment of large sums of money to the Islands have been made.

3. Nor has the institution of the Commonwealth Government in the Philippine Islands changed the power to appropriate funds to the Insular Treasury. During the ten-year Commonwealth period the Philippine Islands are clearly not an independent nation, as is evidenced by the provisions of the Independence Act, the Philippine Constitution,

and the statements of the Executive branch of the government of the United States. Petitioner cites no authority to indicate that the additional powers of self-government granted the Islands during this period affects the power of Congress to appropriate for them. Moreover, petitioner ignores the realities of the situation. Both the Independence Act and the instant tax seriously affect the economic welfare of the Islands, and Congress may well have decided that the disturbing effects of these two measures warranted the economic relief afforded by this provision.

4. Even assuming, *arguendo,* that the Philippine Islands are a foreign country, nevertheless the provision for payment would be valid. In the field of foreign affairs the Federal Government possesses plenary power (*United States* v. *Curtiss-Wright Export Corp., supra*), including the power to appropriate money for whatever purposes are deemed necessary or desirable. Indeed, the matter of the desirability of an appropriation should properly be considered a political question. Compare *Luther* v. *Borden,* 7 How. 1.

B

In any event, the validity of the payment to the Philippines is immaterial to the present case because it is separable from the tax here imposed. The legislative history of the Revenue Act of 1934 demonstrates that the Congress would have levied the tax, even though it could not have made the

payment. This is also shown by a separability clause contained in the Revenue Act and by the proviso in Section 602½ that the payments, but not the tax, shall stop under certain circumstances. *United States* v. *Butler,* 297 U. S. 1, is not to the contrary.

ARGUMENT

Section 602½ (a) of the Revenue Act of 1934 (*infra,* pp. 61–62) imposes a tax of three cents per pound on the first domestic processing of coconut oil, sesame oil, palm oil, palm-kernel oil, and sunflower oil.[2] The section provides (subsection (g)) that all collections under it shall be covered into the general funds of the Treasury of the United States, except such proceeds as are received from the processing of Philippine coconut oil.[3] These proceeds are to be held in a separate fund and paid into the Treasury of the Philippine Islands. Subsection (a). The section further provides that

[2] An additional tax of two cents per pound is levied by the same section upon the first domestic processing of all coconut oil *except* (1) oil from the Philippines or any other possession of the United States; (2) oil produced from materials wholly from the Philippines or other possession of the United States; (3) oil brought into the United States before a specified date; or (4) oil purchased under a contract entered into before a specified date. Oil used by petitioner is exempted from this tax by (1), *supra.*

[3] "Philippine coconut oil" is used in this brief to designate both coconut oil wholly of Philippine production and coconut oil produced from materials wholly of Philippine growth or production. For the purposes of the present tax the two classes of oils may be treated alike.

should the Philippine Government at any time provide by law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments shall be made to the Philippines. Subsection (a).

Petitioner, who has paid a tax of three cents per pound upon coconut oil, pursuant to this section, now seeks to recover it on the ground (1) that it is not a valid tax but a measure regulating intrastate manufacturing and production in violation of the Tenth Amendment to the Constitution; (2) that it is an expropriation of property without due process of law in violation of the Fifth Amendment; and (3) that it is rendered invalid by the provision for the payment of the proceeds to the Philippine Islands. We submit that the tax is a valid exercise of the taxing power of Congress. We shall deal with petitioner's objections in the order stated.

I

THE TAX HERE IMPOSED DOES NOT VIOLATE THE TENTH AMENDMENT

A. *The act is not regulatory*

The tax which is here attacked is, on its face, simply an ordinary manufacturer's excise containing the usual provisions relating to imposition and collection generally found in similar acts. Section 602½ (b). The tax is on processing, a manufacturing operation and a common subject of Federal taxation. Like all revenue measures, the statute origi-

nated in the House of Representatives. The tax is a part of the Revenue Act of 1934, which had as its purpose the raising of revenue for the support of the Government. The section is so constructed that it is capable of producing, and does in fact produce, revenue in substantial amounts.[4] The collections under this act compare favorably with the annual revenues derived from other Federal excise taxes, some of which have been specifically upheld by this Court. In fact, only a few of the many Federal excises produce more.[5]

Neither in the imposition of the tax nor in the expenditure of the proceeds is this act regulatory in operation. No rules relating to conduct of business or local affairs are set forth and departures therefrom penalized, as in the *Child Labor Tax Case*, 259

---

[4] Between July 1, 1934, and January 31, 1937, the tax collections under Section 602½ were as follows:

Sesame, 3 cents per lb	$3,428,587.13
Palm, 3 cents per lb	17,321,891.81
Palm kernel, 3 cents per lb	3,206,878.09
Sunflower, 3 cents per lb	430,154.45
Combinations of the above oils, 3 cents per lb	197,929.36
Coconut, other than listed below, 5 cents per lb	40,278.70
Combinations containing coconut oil (other than listed below), 5 cents per lb	493,778.98
From Philippine coconuts, 3 cents per lb	44,336,506.19
Oil from coconuts produced in other U. S. possessions, 3 cents per lb	525,835.82
Foreign coconut oil with contract or time limit exemption, 3 cents per lb	485,136.60
Fatty acids, 3 cents per lb	16.58
Salts, 3 cents per lb	13.02
	70,467,006.73

[5] See the *Annual Report of the Commissioner of Internal Revenue for the Fiscal Year ended June 30, 1936*, p. 22.

U. S. 20, and *Hill* v. *Wallace*, 259 U. S. 44. The tax is not inflicted as punishment for violations of law, as in *United States* v. *Constantine*, 296 U. S. 287, nor is the tax levied on one transaction and its amount made to depend upon the exercise of other privileges protected by the Constitution and not within the regulatory powers of the legislative body, as in *Grosjean* v. *American Press Co.*, 297 U. S. 233. The amount of tax paid under this act on the processing of Philippine coconut oil depends solely on the quantity of oil processed.

Nor is there here a program of regulation to be accomplished by the spending of money, as was found by this Court in *United States* v. *Butler*, 297 U. S. 1. The proceeds are to go to the Treasury of the Philippine Islands without any restrictions whatsoever. The proviso that payments are to cease if the Philippines provide by law for the payment of subsidies to producers of coconut oil and copra in the Islands is not regulatory, but relates merely to the use of the money to be appropriated. In fact, petitioner attacks the provision for payment to the Philippines on the ground that Congress did not impose sufficient regulation with regard to the expenditure (Br. p. 58). We shall hereafter show, pp. 35–58, that the provision for payment to the Philippines is entirely valid. At this time we simply wish to point out that there is in this act no regulation, either in the operation of the tax or in the expenditure of the money, which would offend the Tenth Amendment.

B. *The motives which inspired Congress to pass the tax are immaterial*

This act, then, is constructed and operates as an ordinary excise tax, and is not, in its construction or operation, regulatory in any way. Petitioner argues, however, that the purpose of Congress in enacting the tax was to protect domestic producers of oils and fats, and that the existence of this purpose invalidates the tax.

Every tax which is imposed bears witness to some economic, social, or moral policy or purpose of the legislature in addition to the general policy of raising revenue. Even the choice of subjects of taxation involves a consideration of the effect of the tax burden upon the individuals and the state. In fact, equity and good statesmanship may often require that a tax system reflect purposes having little or no relation to fiscal matters. To quote Mr. Justice Holmes in *Pacific Fisheries* v. *Alaska*, 269 U. S. 269, 277:

> At least we must take it to be clear that the unlimited power [of taxation] expressly given may be exercised with consideration of collateral advantages and disadvantages. *Alaska Fish, Etc., Co.* v. *Smith*, 255 U. S. 44, 48. It could not be exercised intelligently otherwise.

Cf. *Rast* v. *Van Deman & Lewis*, 240 U. S. 342, 357; *Citizens' Telephone Co.* v. *Fuller*, 229 U. S. 322, 331.

For this reason, this Court has repeatedly held that the motives which persuade Congress to pass a tax are wholly immaterial and will not be inquired into. *McCray* v. *United States,* 195 U. S. 27; *In re Kollock,* 165 U. S. 526, 536; *United States* v. *Doremus,* 249 U. S. 86, 93–94; *Alston* v. *United States,* 274 U. S. 289; *Nigro* v. *United States,* 276 U. S. 332; *Alaska Fish Co.* v. *Smith,* 255 U. S. 44; *Magnano Co.* v. *Hamilton,* 292 U. S. 40, 44; *Quong Wing* v. *Kirkendall,* 223 U. S. 59; *Billings* v. *United States,* 232 U. S. 261; *Hampton & Co.* v. *United States,* 276 U. S. 394; *Fox* v. *Standard Oil Co.,* 294 U. S. 87, 100; *Treat* v. *White,* 181 U. S. 264, 269; *Southwestern Oil Co.* v. *Texas,* 217 U. S. 114, 126–127; *Tax Commissioners* v. *Jackson,* 283 U. S. 527; *Veazie Bank* v. *Fenno,* 8 Wall. 533.

Petitioner argues, however, that the legislative history of this tax shows clearly that the dominant purpose of Congress was the raising of domestic prices. Assuming, *arguendo,*[6] that such was the

[6] The difficulties of ascertaining the "dominant" purpose of Congress are illustrated by the present Act. On the face of the Act, the raising of revenue was represented by Congress as being the dominating purpose. The Committee reports treat the Act as an ordinary taxing measure and disclose no other purpose. House Rep. No. 704, 73d Cong., 2d Sess., p. 41; Senate Rep. No. 558, 73d Cong., 2d Sess., p. 52; House Conference Rep. No. 1385, 73d Cong., 2d Sess., p. 30. In the hearings before the Ways and Means Committee (Hearings on Revenue Revision, 1934, 73d Cong., 2d Sess., p. 579, *et seq.*), those advocating the tax stressed the need for protection to the American oil and fat producers from foreign oils, but they also stressed the importance of the revenue

dominant purpose, it would not comport with the respect due the representations of a coordinate branch of the Government if, in considering the purpose of an Act which states its purpose to be the raising of revenue, this Court were to weigh the remarks of individual legislators and the arguments of various interested persons to decide that question.[7] Legislators, in weighing and debating

to be received. *Id.* 580, 605, 695, 712. During the hearings before the Senate Committee on Finance (Hearings on the Revenue Act of 1934, H. R. 7835, 73d Cong., 2d Sess.), the main witness appearing for all the proponents of this tax stressed the revenue to be received as the most important objective of the tax. (Pp. 318, 338, 345.) Moreover, the members of the committee showed a very distinct interest in the amount of revenue to be produced by the tax. (Confidential Hearings of the Committee on Finance of the United States Senate on H. R. 7835, Part 1, p. 3; Part 5, p. 170.) Also the desirability of the tax was stressed as a means of more equitable distribution of the tax burden, on the ground that the production of domestic oils and fats paid its share of the tax burden through the general Federal taxes on the producers, while the Philippine oils did not contribute to the support of the Government. (*Id.* Part 5, pp. 167, 171; Public Hearings on H. R. 7835, p. 312.) It is further significant, as showing that revenue was in mind, that the original rate of five cents per pound as proposed by the Ways and Means Committee was reduced in conference to three cents. (House Conference Rep. No. 1385, 73d Cong., 2d Sess., p. 30.)

[7] "The arguments of individual legislators are no proper subject for judicial comment. They are so often influenced by personal or political considerations, or by the assumed necessities of the situation, that they can hardly be considered even as the deliberate views of the persons who make them, much less as dictating the construction to be put upon the Constitution by the courts." *Downes* v. *Bidwell*, 184 U. S. 244, 254.

the economic, social, or moral aspects of tax legislation certainly are not to be forced to take care that no statements reach the pages of the Congressional Record or the Committee reports. It cannot possibly be material to the validity of a revenue measure that its non-fiscal advantages and disadvantages were thoroughly considered and debated by Congress, instead of ignored.

Petitioner argues, however, that even conceding the foregoing argument, nevertheless the non-fiscal purpose of the present Act should be considered by this Court because the provision for payment to the Philippines of all the proceeds, and the proviso thereto (see pp. 9–10, *supra*), are proof of this purpose on the face of the Act. There are two answers.

First, it is by no means clear that these provisions furnish the proof which petitioner argues that they do. Their *fiscal* purposes may, in other words, have been equally important in the mind of Congress. Inasmuch as petitioner's argument must be bottomed on the fact that they can have no possible fiscal purpose, it is necessary to show only that they *may* have been deemed by Congress to be necessary to the *fiscal* purposes of Section 602½. See *United States* v. *Doremus*, 249 U. S. 86, 93, 95; *Alexander Theater Ticket Office* v. *United States*, 23 F. (2d) 44, 48 (C. C. A. 2d).

Obviously, the Section as a whole was intended to raise revenue by a tax upon several classes of oils, all of which compete with each other for both edible

and non-edible purposes in the United States.[8] A tax upon some of the oils and not upon the others might well have resulted, therefore, in materially lessened revenue, because the untaxed, and hence cheaper, oils would be preferred. Consequently, a tax on all oils may well have been considered by Congress to be necessary for revenue purposes.

This tax on all oils, however, was alleged to violate at least the spirit of the Philippine Independence Act, in which we had set for ten years an annual 200,000 long ton duty-free quota of Philippine coconut oil. Consequently, in order to obtain the considerable revenues derived from the taxes on other oils, and from the taxes on coconut oil not of Philippine production,[9] and at the same time to avoid even the appearance of a breach of faith, the provision for paying the proceeds from the tax on Philippine coconut oil to the Islands was added. The proviso was necessary in order to prevent the Philippine Islands, by bounties, from distorting or destroying the balance which Congress had fixed by Section 602½ among the taxed oils, and between oil from the Philippines and from other possessions of the United States and foreign countries.

Apart from the fact that the provision may well have had a fiscal rather than, or as well as, a non-fiscal purpose, petitioner's contention is open to the further objection that it assumes that *any* evi-

[8] See United States-Philippine Trade (U. S. Tariff Commission, 1937), p. 95.

[9] See p. 11, *supra*.

dence of a non-fiscal purpose on the face of a tax statute *ipso facto* renders its purpose open to review by the courts. The decisions of this Court are clearly to the contrary.

The leading decision is probably *Hampton & Co.* v. *United States,* 276 U. S. 394, in which the validity of the Tariff Act of 1922, c. 356, 42 Stat. 858, was challenged with respect to the "flexible" tariff provision. Under that Act, the President was authorized, subject to certain limitations, to effect changes in tariff rates to equalize the differences between the costs of producing articles in the United States and in principal competing countries. Several factors which were to be considered by the President were specified in the Act. The provision was in fact, *and was declared by the Act itself to be,* an elaborate plan to protect and foster the production of American goods. It was therefore contended that the Act was unconstitutional, since the power of Congress in levying customs duties might be exercised only for revenue purposes. The Court rejected that contention, saying (pp. 412–413):

> So long as the motive of Congress and the effect of its legislation are to secure revenue for the benefit of the general government, the existence of other motives in the selection of subjects of taxes cannot invalidate Congressional action. * * *
>
> * * * the fact that Congress *declares* that one of its motives in fixing the rates of

> duty is so to fix them that they shall encourage the industries of this country in the competition with the producers in other countries in the sale of goods in this country cannot invalidate a revenue act so framed. * * * [Italics supplied.][10]

If a *declared* purpose to benefit home industries does not invalidate a revenue statute, it is difficult to see how petitioner's *inference* of the same non-fiscal purpose in the present section can be deemed sufficient warrant for an investigation of that purpose in the present case.

Many other cases may be cited which dealt with statutes where the non-fiscal motives could be inferred from the face of the act much more certainly than they can here. In *McCray* v. *United States, supra,* a tax on yellow oleomargarine *forty* times as high as that on white indicated clearly a collateral motive for the tax. Indeed, a collateral motive was stated in the taxing act. In *Veazie Bank* v. *Fenno, supra,* a ten percent tax on state bank notes was obviously prohibitive and intended for only one purpose—to remove state bank notes from

[10] Tariffs may be supported not only under the revenue power but also under the power to regulate foreign commerce. *Cf. Board of Trustees* v. *United States*, 289 U. S. 48, 58; *United States* v. *Butler*, 297 U. S. 1, 63. However, the latter power was not relied upon in the *Hampton* decision. Moreover, the impelling motive to protect domestic industry was no more within Congressional power over foreign commerce than it was within the taxing power, and the Court's decision in upholding the Act is none the less applicable here.

existence. In *United States* v. *Doremus, supra,* the moral purpose of the tax on opium was frankly recognized by this Court (p. 94). Yet in all of these cases the Court held the non-fiscal purposes to be immaterial. See, also, *Crocker* v. *Malley,* 249 U. S. 223, 234; *Alaska Fish Co.* v. *Smith, supra; Alexander Theatre Ticket Office* v. *United States,* 23 F. (2d) 44 (C. C. A. 2d); *McKenna* v. *Anderson,* 31 F. (2d) 1016 (C. C. A. 2d), certiorari denied, 279 U. S. 869; Story, *Commentaries on the Constitution* (5th ed.), Sec. 965. Cf. *Magnano Co.* v. *Hamilton, supra.*

These cases demonstrate the settled doctrine of this Court to be that non-fiscal purposes will not destroy the validity of an act as long as Congress has sought to achieve those purposes merely through the levy and collection of a tax and has not attempted to achieve them by the exercise of some different power not possessed. Constitutionality depends upon what the act is, not on the reasons for its enactment. If the operative provisions deal with the raising of revenue and the act is in operation and effect a tax which actually raises revenue, it matters not that the reason Congress imposed the particular tax on the particular subject is to be found in considerations of public policy unrelated to fiscal matters.

C. In any event, even if the motives of Congress be considered, they do not invalidate the tax.

Nevertheless, even if the validity of the tax were to be judged by the motives actuating Congress, we

believe it settled by a century and a half of practice, expressly approved by this Court, that Congress may levy taxes with the end in view of encouraging domestic producers by protecting them from outside competition.

The power of Congress to impose particular taxes in an effort to protect home industry was fully considered by this Court in *Hampton & Co. v. United States, supra.* The Court said (pp. 411–413):

> It is contended that the only power of Congress in the levying of customs duties is to create revenue, and that it is unconstitutional to frame the customs duties with any other view than that of revenue raising. It undoubtedly is true that during the political life of this country there has been much discussion between parties as to the wisdom of the policy of protection, and we may go further and say as to its constitutionality, but no historian, whatever his view of the wisdom of the policy of protection, would contend that Congress, since the first revenue Act, in 1789, has not assumed that it was within its power in making provision for the collection of revenue, to put taxes upon importations and to vary the subjects of such taxes or rates in an effort to encourage the growth of the industries of the Nation by protecting home production against foreign competition. * * * Whatever we may think of the wisdom of a protection policy, we cannot hold it unconstitutional.

It may be urged that the customs duties which were held valid in the *Hampton* case may be supported under the commerce power, and that, consequently, the decision is not in point here. But the decision was not rested upon the commerce power, but upon the taxing power. Moreover, this Court has referred to the validity of protective tariffs in sustaining internal taxes with a non-fiscal motive. In *Alaska Fish Co.* v. *Smith*, 255 U. S. 44, the Court said (p. 48):

> If Alaska deems it for its welfare to discourage the destruction of herring for manure and to preserve them for food for man or for salmon, and to that end imposes a greater tax upon that part of the plaintiff's industry than upon similar use of other fish or of the offal of salmon, it hardly can be said to be contravening a Constitution that has known protective tariffs for a hundred years.

The importance of the *Hampton* decision on the issue of the constitutionality of the act at bar, however, does not depend upon whether Congress, in enacting tariff laws, is exercising its power over commerce or its power of taxation. The importance is that the case recognizes that Congress may validly exercise powers granted it by the Constitution for the purpose of protecting domestic industry. We do not argue that the present act is an exercise of the commerce power. We urge that it is an exercise of the taxing power. Assuming petitioner's contentions to be correct, it is an exer-

cise of the taxing power in furtherance of the Government's tariff policy, a policy that has been the established practice of our Government ever since its inception. Congress may not, of course, under its commerce power enact a law requiring a manufacturer to use domestic oils, any more than Congress could do so under its taxing power. But Congress may, under the commerce power, exercise its right to regulate imports with the purpose of accomplishing that result, and likewise, we insist, Congress may exercise its taxing power by imposing an ordinary manufacturer's excise with the same purpose.

Petitioner, although objecting in this proceeding to the use by Congress of its powers to protect the domestic producers of oils and fats, is, at the same time, enjoying the benefits of the use by Congress of its powers to protect petitioner and other manufacturers of soap in continental United States from outside competition. See Act of June 17, 1930, c. 497, 46 Stat. 590, Title I, Schedule I, Sec. 1, par. 80 (U. S. C., Title 19, Sec. 1001), imposing a tariff on that product. This tariff has existed for a number of years. See Act of September 21, 1922, c. 356, 42 Stat. 858, Sec. 1, par. 82.

The protection of producers in this country from outside competition is peculiarly within the field of activity of the Federal Government under the Constitution and the Tenth Amendment thereto. Over all matters pertaining to external affairs the Federal Government has been vested with full and

complete authority. The differences in our dual system between actions relating solely to internal matters and actions having to do with foreign policy are so great that the power of the Federal Government over the latter has been held to stem not only from the specific grants of the Constitution, but also directly from the Crown of England as a necessary concomitant of sovereignty. *United States* v. *Curtiss-Wright Export Corp.*, No. 98, decided December 21, 1936.

The exclusive right of the Federal Government to formulate and carry out policies having to do with our external relations has particular force in the fields of commerce and importation of goods. By reason of Article I, Section 10, clause 2 of the Constitution, the States are entirely powerless to protect domestic industry from foreign competition. In exercising its taxing power, for example, a State may not discriminate against goods brought in from another country, even though such goods have come to rest in the taxing State. *Welton* v. *State of Missouri*, 91 U. S. 275; *Robbins* v. *Shelby Taxing District*, 120 U. S. 489, 493–494; *Cook* v. *Pennsylvania*, 97 U. S. 566; *Phila. Steamship Co.* v. *Pennsylvania*, 122 U. S. 326, 341; *Crew Levick Co.* v. *Pennsylvania*, 245 U. S. 292. Under these decisions it seems clear that a state statute imposing a tax on the first domestic processing of coconut oil "wholly of Philippine production", or

even on foreign oils to the exclusion of similar oils produced by that State, would be invalid.

Unquestionably, if there is to be any protection to the people of this country from external competition, it must be afforded by the Federal Government. For Congress to offer that protection is entirely legitimate under the Constitution and cannot be said to be an attempt by Congress to act in a field reserved to the states by the Tenth Amendment. Moreover, the end being legitimate, Congress may exercise any of its powers in seeking its accomplishment.

None of the cases upon which petitioner relies hold to the contrary. Those statutes purporting to be taxes, which have been held unconstitutional under the Tenth Amendment, were statutes which operated, not as taxing statutes, but as laws regulating matters outside the field of Federal power. In the *Child Labor Tax Case,* 259 U. S. 20, and in *Hill* v. *Wallace,* 259 U. S. 44, Congress had prescribed courses of conduct with penalties for departures. In *United States* v. *Constantine,* 296 U. S. 287, a penalty was imposed upon the violation of state liquor laws. Liability to taxation depended upon scienter in the *Child Labor* case; upon membership in a board of trade complying with detailed regulations concerning grain futures in *Hill* v. *Wallace;* and upon violation of state law in the *Constantine* case. These provisions, which were all unrelated to the raising of revenue, caused this Court to con-

clude in each case, not that a tax had been levied with improper motives, but that the act did not levy a tax at all, and was a regulatory law directed to matters over which powers of regulation were not possessed.

We submit, therefore, that Section 602½ should be considered as an exercise of the taxing power, and that the motives which inspired Congress to pass the tax are immaterial. In any event, even if the motives of Congress be considered, they do not invalidate the tax.

II

THE ACT DOES NOT VIOLATE THE FIFTH AMENDMENT

The guarantee of due process in the Fifth Amendment, when applied to a Federal revenue act, requires only that the act be actually a taxing act and not be so arbitrary and unreasonable as to compel the conclusion that it does not involve an exercise of the taxing power at all. *Brushaber* v. *Union Pac. R. R.*, 240 U. S. 1, 24; *Billings* v. *United States*, 232 U. S. 261, 282; *McCray* v. *United States*, 195 U. S. 27, 61; *Magnano Co.* v. *Hamilton*, 292 U. S. 40, 44; *Nichols* v. *Coolidge*, 274 U. S. 531, 542; *Untermyer* v. *Anderson*, 276 U. S. 440; *Heiner* v. *Donnan*, 285 U. S. 312; *Helvering* v. *City Bank Co.*, 296 U. S. 85, 90.

As we have pointed out, the act at bar is a taxing act. There are no provisions in the statute that could be said to be so arbitrary and unreasonable as to class the statute as a confiscation of property.

The tax is not retroactive and the amount to be paid does not depend upon arbitrary considerations, but is dependent solely upon the extent to which the privilege taxed is exercised.

Petitioner argues, however, that the act is not a true taxing act and violates the Fifth Amendment because the proceeds are earmarked for payment to the Treasury of the Philippine Islands. We shall show later in this brief, pp. 35–58, that payment of this money to the Philippines is a valid use of Federal revenues. Nevertheless, we understand petitioner to argue that even though Congress might validly appropriate money from the general funds of the Treasury for this purpose, Congress may not earmark the proceeds of a particular tax for that purpose without violating the Fifth Amendment.

In discussing this argument, we wish at the outset to dispose of petitioner's objection to the form of the earmarking provisions. Petitioner asserts that under these provisions the money is to be paid directly to the Philippine Treasury without an appropriation as required by Article I, Section 9, Clause 7, of the Constitution. On the contrary, however, earmarking provisions like that being considered are not treated by Congress or the Treasury Department as permitting direct payment to the specified recipient. Actually, the money is deposited in a trust fund in the Treasury, from whence it is paid under regular appropriation acts of Congress. See the Permanent Ap-

propriation Repeal Act of June 26, 1934 (c. 756, 48 Stat. 1224), wherein Congress has specifically appropriated the money in a large number of such trust funds, including (Section 20) a continuing appropriation of the money in the Philippine special fund (internal revenue). Into this Philippine special fund are paid the proceeds of the internal revenue taxes which have since 1902 been levied in this country on goods imported from the Philippines and which are earmarked to be paid to the general fund of the Philippine Treasury. It would seem that this fund and the appropriations relating to it would cover the proceeds from the taxes here being considered.

Even if that were not the case, however, we submit that it is immaterial whether or not Congress has yet appropriated this money. A taxing act would not be invalid simply because the proceeds were not immediately appropriated. The absence of an appropriation "does not make void the demand for contribution, which may yet be appropriated by Congress, if that be necessary, by another statute." *Head Money Cases,* 112 U. S. 580, 599–600.

The contention of petitioner that the mere fact that a tax is earmarked for a particular purpose, even though that purpose is an entirely valid one for the application of public money from the Treasury, robs the tax of its character and converts it into confiscation forbidden by the Fifth Amendment, we believe to be entirely unsupportable.

Clearly, a tax is no less a revenue measure because imposed to raise revenue for a specific purpose. Since taxes are levied to provide funds intended to carry on governmental activities, it seems apparent that there is a natural and proper relation between specific anticipated governmental expenditures and the revenues to be raised by taxes.[11] Indeed, the Constitution itself specifies the uses for which taxes may be levied. Article I, Section 8, Clause 1. Some proponents of Governmental budgetary reform believe the connection should be made obligatory by law, as it is in some States of the United States. This Court has recognized that this relationship is a normal and necessary incident of the legislative function. *Knights* v. *Jackson,* 260 U. S. 12, 15; *Patton* v. *Brady,* 184 U. S. 608, 620. There can, we submit, be no objection if an act levying a tax also specifies the uses to which the proceeds are to be put, if that use is within the purposes permitted by the Constitution.

Taxes for some one particular purpose of government have been imposed for centuries, and that fact alone has never been thought to make the exaction something other than a tax. Such taxes were familiar English practice long prior to the adoption of our Constitution. From the earliest days it had been customary for Parliament to grant to

[11] See the Report of the Select Committee on the Budget of the House of Representatives (H. Rep. No. 14, 67th Cong., 1st Sess.) commenting on the importance of considering expenditures along with revenue.

the King specific additional taxes for the purpose of carrying on a war; "hereditary excises" for the purpose of defraying the expenses of the household; and additional taxes for the purpose of maintaining the civil lists. 6 Holdworth's History of the English Law, p. 253; 1 Blackstone, Commentaries, pp. 330, *et seq.* The English poor rate, the church rate, the sewer rate, the lighting and watching rates are similar examples. The fact that these special taxes defray a special expenditure of government does not render them any the less taxes. Seligman, Essays on Taxation (1895 ed.), pp. 345–349. And in this country all the States lay taxes for special purposes—taxes for roads, for schools, and the like. In fact, many state constitutions provide that no tax shall be laid unless its object is clearly specified. *E. g.,* New York Constitution, Article III, Sec. 24; Iowa Constitution, Article VII, Sec. 7; Michigan Constitution, Article X, Sec. 6. Nor is it any new departure for Congress, by the act levying the tax itself, to earmark or even appropriate the proceeds to a particular purpose.[12]

[12] Congress has often expressed in taxing acts the purpose of the tax, both by making actual appropriations in the act of the revenues to arise therefrom and by earmarking the revenues for a particular expenditure. Thus, actual appropriations were made by the Act of March 3, 1791, c. 15, 1 Stat. 199, 213–214, where a tax was levied on spirits and it was provided that the proceeds thereof were pledged and appropriated for the payment of interest on loans and the payment of the public debt; the Act of May 8, 1792, c. 32, 1 Stat. 267, 270, levying a tax on spirits and pledging and appropriating the proceeds to the purposes set forth in

Indeed, the earmarking provisions here are practically identical with those of the Foraker Act of April 12, 1900 (c. 191, 31 Stat. 77), which levied customs duties and internal revenue taxes in this country on Puerto Rican products, and provided that the proceeds should be paid to Puerto Rico. The Foraker Act was upheld in *Downes* v. *Bidwell*, 182 U. S. 244. In a like manner, money for the support of the Philippine government has been raised by internal revenue taxes and customs in this country, the proceeds being earmarked for the Philippine Treasury. Act of March 8, 1902, c. 140, 32 Stat. 54; Act of August 5, 1909, c. 6, 36 Stat. 11, 84–85; Act of October 3, 1913, c. 16, 38 Stat. 114, 193; Act of September 21, 1922, c. 356, 42 Stat. 858, 935; Act of June 17, 1930, c. 497, 46

---

the Act of March 3, 1791, and in the Act of May 2, 1792, *infra*; the Tariff Act of March 3, 1797, c. 10, 1 Stat. 503, appropriating the duties derived thereunder (1) to the payment of the Federal foreign debt and (2) to the payment of the debt owing to the Bank of the United States; the Tariff Act of May 13, 1800, c. 66, 2 Stat. 84, appropriating the proceeds to the discharge of interest and principal of the debts of the United States. And revenues were earmarked for particular expenditures in the Tariff Act of May 2, 1792, c. 27, 1 Stat. 259, 262, where it was provided that the surplus of the duties levied thereunder was to be applied to carry out a Federal act for the protection of the frontiers of the United States; the Act of March 26, 1804, c. 46, 2 Stat. 291; increasing all tariffs and providing that the proceeds from the increase go into a separate fund to be used for the sole purpose of carrying on a war against the Barbary powers; the Liquor Tax Act of December 21, 1814, c. 15, 3 Stat. 152, which authorized the Secretary of the Treasury to pledge the proceeds thereof in obtaining a

Stat. 590, Sec. 301. These statutes are precedents for, and, we believe, the decision in *Downes* v. *Bidwell* is authority for the validity of a tax levied in this country, the proceeds of which are earmarked for the Philippine Treasury.[13]

The fact, if it were a fact, that this particular taxpayer received no direct benefit from the expenditure of money for the purposes expressed in the act would be immaterial to the validity of the tax. It is not necessary that taxpayers receive a direct benefit from the use which is made by the Government of the revenues. It is sufficient if the proceeds are used for some proper governmental purpose. *Carley & Hamilton* v. *Snook,* 281 U. S. 66, 71–72; *Nashville, C. & St. L. Ry.* v. *Wallace,* 288 U. S. 249, 258. When so used, the money goes toward the promotion of a matter which has for its object the welfare of all (*Illinois C. R. Co.* v. *Decatur,* 147 U. S. 190, 198), and in this fact lies the justification for the levy. Thus, in the *Nashville* case, a railroad was required to pay a tax on the storage of the gasoline which ran its trains, al-

---

loan on such a pledge; the Revenue Act of 1917, c. 159, 39 Stat. 1000, providing that the taxes collected under Title II and one-third of the taxes collected under Title III of that Act should constitute a separate fund for expenditures under certain acts providing for war preparedness; the tax on the sale of motor fuels sold in the District of Columbia, Act of April 23, 1924, c. 131, 43 Stat. 106, wherein it is specified that the proceeds were to be available only for road improvement and repair.

[13] Petitioner asserts that *Downes* v. *Bidwell,* supra, is not in point here, for the reason that the customs duties were

though the taxing act provided that the proceeds were to be used solely for the construction and maintenance of a highway system in the State. This use of the money not only did not benefit the railroad, but, on the contrary, directly injured it. The railroad contended that the specification of the use to be made of the tax proceeds made the exaction a fee rather than a tax, and since the railroad received no benefit from the use of the money, the exaction was unconstitutional. This Court, however, held that the exaction was constitutional as a true tax. Compare *Green* v. *Frazier*, 253 U. S. 233; *Jones* v. *City of Portland*, 245 U. S. 217; *Milheim* v. *Moffat Tunnel Dist.*, 262 U. S. 710, 719; *Olcott* v. *The Supervisors*, 16 Wall. 678, 695, 696; *Pine Grove* v. *Talcott*, 19 Wall. 666, 676, 678; *Wisconsin &c. R'd Co.* v. *Jacobson*, 179 U. S. 287; *Donovan* v. *Pennsylvania Co.*, 199 U. S. 279, 292, 293; *Magnano Co.* v. *Hamilton, supra.*

Moreover, in the present case it would be difficult to suggest a tax which could be levied in this country to secure revenue for the support of a government in the Philippines where the taxpayer would

---

there considered by the Court to be an exercise of the power of Congress to legislate for the territories. The opinion of Mr. Justice Brown is clearly to the contrary, and indicates that he was of the opinion that the Foraker Act was an exercise of power of Congress to levy taxes, duties, etc., under Article I, Section 8 of the Constitution. (See 182 U. S. at p. 249. See also the concurring opinion of Mr. Justice White, 182 U. S. at p. 299, which indicates that he was of the same opinion.)

receive a more direct benefit from the use of the money than does the petitioner in this case. Were there no stable government maintained in the Philippines, it might well be impossible for the petitioner and other processors in this country of Philippine coconut oil to secure oil from that source. Petitioner alleges in its complaint that Philippine coconut oil is an essential ingredient of a large proportion of the soaps made and sold by it. (R. 3.) Production and exportation of this oil from the Philippines is made possible by the exercise on the part of Congress of its power of establishing and maintaining a government to promote law, order, trade and commerce in the Philippines. Petitioner and others who benefit from the existence of this government have little basis for complaining that some of the money to support it comes from taxes laid on the processing of oil from those Islands.

There is nothing in the decision of *United States* v. *Butler*, 297 U. S. 1, that indicates that Congress may not earmark its taxes for valid purposes. That decision held that it was unconstitutional to lay an exaction to raise money to be expended in a way forbidden by the Tenth Amendment. The vice in the statute considered in the *Butler* case was not that the money was earmarked, but that it was earmarked for use in an unconstitutional scheme of regulation. Nor do the cases of *Millard* v. *Roberts*, 202 U. S. 429, and *Twin City Bank* v. *Nebeker*, 167 U. S. 196, hold that the character of

a revenue act as a tax within the power of Congress is destroyed merely because the purpose to which the proceeds are to go is designated in the act. In those cases this Court held only that the laws in question did not have to comply with the constitutional requirement that all bills for the raising of revenue originate in the House of Representatives, because they were supportable as, and were intended to be, exercises of other powers vested in Congress.

We conclude that if, as we shall show, Congress has the power to appropriate public money to the Philippine Islands under the circumstances existing at the time of the passage of this act, the earmarking of the proceeds of this particular tax for that purpose does not destroy its revenue character and does not offend the Fifth Amendment.

III

THE VALIDITY OF THE TAX IS NOT AFFECTED BY THE PROVISIONS EARMARKING THE PROCEEDS OF THE TAX TO THE TREASURY OF THE PHILIPPINE ISLANDS

Petitioner, to demonstrate that the instant tax is invalid because of the provision for payment of the proceeds to the Philippine Islands, must prove each of two propositions to be true: (A) That it would be invalid to appropriate funds of the United States for the benefit of the Philippine Islands *and* (B) that the provision in Section 602½ (a) direct-

ing the payment of the proceeds of the tax on Philippine coconut oil to the Islands is inseparable from the tax. We submit that neither proposition can be supported.

A. Congress has full power to appropriate these funds for the support of the Philippine Islands

Petitioner contends that the provisions earmarking the proceeds of this tax for the general treasury of the Philippine Islands is bad for several reasons: (1) that it was merely an afterthought on the part of Congress in order to discharge a moral obligation to the Philippines, and bears no relation to the needs of the Islands or to the responsibilities of the United States (Br. pp. 47–59); or (2) that, in any event, the Philippine Islands have never been, and therefore are not now, a proper object for the expenditure of the funds of the United States (Br. pp. 1–39); or (3) that, in any event, after November 15, 1935, when the Commonwealth Government of the Philippines was established, the Islands became so far removed from the control of the United States that money could no longer be expended for their benefit (Br. pp. 47–59). We shall discuss these contentions in that order. Indeed, as we shall suggest below (*infra*, pp 56–58), even if it be assumed that the Philippines are a separate nation, nevertheless the appropriation of money to them would be wholly proper.

1. IF IT BE ASSUMED, ARGUENDO, THAT THE PROVISION DIRECTING PAYMENT TO THE ISLANDS WAS INSERTED FOR THE PURPOSE OF DISCHARGING A MORAL OBLIGATION, THE PAYMENT FOR SUCH A PURPOSE IS WITHIN THE POWER OF CONGRESS

The petitioner suggests that the purpose of Congress in inserting the provision for the payments to the Philippines was to recognize and discharge a moral obligation (Br. 72–75). This argument is based upon the fact that Section 6 of the Independence Act (c. 84, 48 Stat. 456) contains a provision that "After the date of the inauguration of the government of the Commonwealth of the Philippine Islands trade relations between the United States and the Philippine Islands shall be as now provided by law * * *" except that quotas are fixed for the importation into this country, without new or increased duties, of sugar and coconut oil. The petitioner also relies upon certain statements made by the Chairman of the Senate Committee on Finance in the course of the Senate debate on Section 602½ [14] and upon a letter from the President to the Chairman of the Senate Committee on Finance.[15]

Assuming that, as asserted by petitioner, the provision for payments to the Philippines was in recognition and discharge of a moral obligation, the provision is clearly constitutional, irrespective of the status of the Philippines. This Court has held that the Congress has the power to recognize

[14] Cong. Rec., Vol. 78, Part 6, p. 6311.
[15] *Id.*, p. 6317.

and authorize the payment of a moral obligation of the Government as a debt under Article I, Section 8, of the Constitution. *United States* v. *Realty Company*, 163 U. S. 427. The Court there said (at p. 440):

> What are the debts of the United States within the meaning of this constitutional provision? It is conceded and indeed it cannot be questioned that the debts are not limited to those which are evidenced by some written obligation or to those which are otherwise of a strictly legal character. The term "debts" includes those debts or claims which rest upon a merely equitable or honorary obligation, and which would not be recoverable in a court of law if existing against an individual. The nation, speaking broadly, owes a "debt" to an individual when his claim grows out of general principles of right and justice; when, in other words, it is based upon considerations of a moral or merely honorary nature, such as are binding on the conscience or the honor of an individual, although the debt could obtain no recognition in a court of law. The power of Congress extends at least as far as the recognition and payment of claims against the government which are thus founded. * * *

Certainly Congress is not limited to the payment of debts owed to citizens of the United States. Cf. *Russian Volunteer Fleet* v. *United States*, 282 U. S. 481. We submit, therefore, that irrespective

of the status of the Philippine Islands, the acceptance of petitioner's argument leads irresistibly to the conclusion that the payment here involved is valid.

2. PRIOR TO THE ESTABLISHMENT OF THE PRESENT COMMONWEALTH GOVERNMENT OF THE PHILIPPINES, THE UNITED STATES HAD FULL POWER TO APPROPRIATE MONEY FOR THE BENEFIT OF THE ISLANDS

By Article III of the Treaty of Paris (30 Stat. 1754) Spain ceded to the United States, without limitation or qualification, "the archipelago known as the Philippine Islands", and the United States, in turn, agreed to pay Spain $20,000,000. Upon the ratification of that treaty and the payment of the money (Act of March 2, 1899, c. 376, 30 Stat. 993), the Islands became a dependency and possession of the United States, over which the Federal Government had supreme and plenary power[16] *Posadas* v. *National City Bank*, 296 U. S. 497, 502; *Fourteen Diamond Rings* v. *United States*, 183 U. S. 176, 179; 34 Op. Atty. Gen. 287, 291.

Having thus acquired the Islands, Congress was, we submit, authorized by the Constitution to take whatever measures were necessary to promote their welfare and the welfare of the United States in relation to them. Further, Congress had the

[16] Certain islands geographically attached to the archipelago, but not included within the metes and bounds of Article III of the Treaty of Paris, were later purchased from Spain for $100,000. Supplemental Treaty proclaimed March 23, 1901, 31 Stat. 1942.

power to appropriate money to be used in carrying out these purposes. The power to appropriate is not simply a reasonable implication from, but is absolutely necessary to the exercise of the power of Congress over the territories of the United States specifically granted by Article IV, Section 3, Clause 2, of the Constitution. *Cf. American Ins. Co.* v. *Canter,* 1 Pet. 511, 542; *United States* v. *Kagama,* 118 U. S. 375, 380; *De Lima* v. *Bidwell,* 182 U. S. 1, 197, 199.

Indeed, so far as we have been able to discover, the contention has never before been advanced that the plenary authority of Congress over the territories under Article IV, Section 3, contains an implicit limitation which forbids Congress to appropriate money for their benefit. Such a construction of the clause is in direct conflict with the frequent expressions of this Court that, with respect to territories, the United States is sovereign, and is to be deemed equal in power with other sovereign nations. *Downes* v. *Bidwell,* 182 U. S. 244, 285; *Dorr* v. *United States,* 195 U. S. 138, 140. In *Downes* v. *Bidwell, supra,* the Court said (p. 285):

> If it be ever conceded that we are at liberty to acquire foreign territory, a presumption arises that our power with respect to such territories is the same power which other nations have been accustomed to exercise with respect to territories acquired by them. * * * The States could only delegate to Congress such powers as they themselves possessed, and as they had no power to ac-

> quire new territory they had none to delegate in that connection. The logical inference from this is, that if Congress had the power to acquire new territory, which is conceded, that power is not hampered by Constitutional provisions.

The power over territories is, in other words, plenary in the widest sense, and does not depend "upon the affirmative grants of the Constitution." *United States* v. *Curtiss-Wright Export Corp.*, No. 98, decided December 21, 1936. Certainly it needs no argument to prove that the sovereignty of the United States over its territories is hopelessly incomplete if the funds for any purpose in any territory must be raised within that territory.

In point of fact, the contention is completely answered by the uniform practice of Congress in exercising its power of appropriation for the benefit of the territories. Since the beginning of the Government, appropriations have been made from the Treasury of the United States for the various territorial possessions, chiefly for the support of their governments, and, on occasion, for other purposes, such as internal improvements. This power of appropriation was first exercised with respect to the continental territories of the United States, including the District of Columbia.[17] With the acquisition of Alaska, similar appropriations of an

[17] In general, see, *e. g.*, Act of December 23, 1791, c. 3, 1 Stat. 226–227; Act of March 14, 1794, c. 6, 1 Stat. 342, 344; Act of May 7, 1800, c. 47, 2 Stat. 62, 65; Act of March 3, 1807, c. 25, 2 Stat. 431; Act of December 5, 1807, c. 2,

even more varied type were made for its support and benefit.[18] More recently, appropriations of every character have been made for the government and welfare of the various insular possessions. Excluding, for the moment, the Philippines, Congress has provided, in addition to huge sums for government expenses,[19] many contributions to the general funds of the territorial treasuries (see *infra*, pp. 46–47),[20] and has taken steps to reduce or eliminate, by use of the funds of the

---

2 Stat. 450; Act of March 24, 1814, c. 28, 3 Stat. 106, 109; Act of April 27, 1816, c. 131, 3 Stat. 318; Act of February 12, 1828, c. 6, 4 Stat. 247, 252; Act of July 20, 1868, c. 176, 15 Stat. 92, 108–109. For early appropriations for the District of Columbia, see, *e. g.*, Act of February 27, 1801, c. 15, 2 Stat. 103, 106; Act of March 2, 1803, c. 29, 2 Stat. 235. See also, *e. g.*, Act of July 14, 1935, c. 241, 49 Stat. 341. For the Territory of Louisiana, see, *e. g.*, Act of March 19, 1804, c. 27, 2 Stat. 272; Act of March 26, 1804, c. 38, 2 Stat. 283, 285, 286, 289. For the Territory of Florida, see, *e. g.*, Act of March 3, 1819, c. 93, 3 Stat. 523; Act of February 28, 1824, c. 22, 4 Stat. 5. For the Territory of Arkansas, see, *e. g.*, Act of January 31, 1824, c. 17, 4 Stat. 5; Act of May 24, 1828, c. 100, 4 Stat. 303.

[18] See, *e. g.*, Act of July 27, 1868, c. 273, 15 Stat. 240; Act of July 7, 1884, c. 331, 23 Stat. 159, 179. For later appropriations, see *e. g.*, Act of May 14, 1930, c. 273, 46 Stat. 279, 321–323; *Annual Report of the Governor of Alaska* (1936), pp. 1, 9, 10, 26–27, 34, 42–44.

[19] See, *e. g.*, Act of March 3, 1901, c. 831, 31 Stat. 1010, 1018 (Hawaii); Act of April 28, 1902, c. 594, 32 Stat. 120, 148 (same); Act of May 14, 1930, c. 273, 46 Stat. 279, 323 (Same); Act of July 1, 1918, c. 114, 40 Stat. 704, 706 (Virgin Islands); Act of July 1, 1922, c. 259, 42 Stat. 786, 788 (Same).

[20] See, *e. g.*, Act of July 1, 1902, c. 1383, 32 Stat. 731 (Puerto Rico); Act of June 14, 1910, c. 290, 36 Stat. 467 (Same); Act of June 19, 1930, c. 546, 46 Stat. 789 (Hawaii); Act of June 19, 1936, c. 604, 49 Stat. 1535 (Same).

United States, the public debts of Hawaii and the Virgin Islands.[21] Public funds of the United States have been appropriated for extending the postal system to the territories,[22] for promoting the health of their people,[23] and for assisting in their education.[24] Large amounts have been expended in aid of agriculture, not only by experiment stations and extension service work,[25] but by direct aid to the farmers themselves.[26] Funds for roads,[27]

---

[21] Act of March 3, 1901, c. 853, 31 Stat. 1133, 1152 (Hawaii); Act of February 17, 1933, c. 98, 47 Stat. 820, 855 (Virgin Islands); Act of June 22, 1936, c. 689, 49 Stat. 1597, 1623 (Hawaii).

[22] The Post Office Department does not supply separate figures on the expenses of the hundreds of post offices in Alaska, Hawaii, Puerto Rico, Guam, Samoa, and the Virgin Islands, but all are supported out of the general appropriations for the Department. See also minor special appropriations in Act of March 3, 1901, c. 831, 31 Stat. 1010, 1042; Act of October 28, 1919, c. 86, 41 Stat. 323.

[23] See, *e. g.*, Act of January 26, 1903, c. 332, 32 Stat. 750 (Hawaii); Act of May 28, 1924, c. 203, 43 Stat. 182, 184 (Guam).

[24] See, *e. g.*, Act of April 19, 1930, c. 201, 46 Stat. 229, 234 (Hawaii); Act of March 3, 1931, c. 404, 46 Stat. 1489 (Puerto Rico). See also 23 Op. Atty. Gen. 329.

[25] See, *e. g.*, Act of May 25, 1900, c. 555, 31 Stat. 191, 199 (Hawaii); Act of March 3, 1903, c. 1008, 32 Stat. 1147, 1164 (Hawaii and Puerto Rico); Act of May 26, 1910, c. 256, 36 Stat. 416, 438 (Guam); Act of December 5, 1924, c. 4, 43 Stat. 672, 682 (Same); Act of February 17, 1933, c. 98, 47 Stat. 820, 855 (Virgin Islands).

[26] See, *e. g.*, *Annual Report of the Governor of Porto Rico* (1931), pp. 10, 20.

[27] See, *e. g.*, Act of February 23, 1931, c. 283, 46 Stat. 1415 (Hawaii); Act of July 3, 1930, c. 846, 46 Stat. 860, 865 (Puerto Rico); Act of February 25, 1927, c. 202, 44 Stat. 1244 (Virgin Islands).

public buildings,[28] parks,[29] and forests [30] have been supplied by the United States. Large amounts have been appropriated for the amelioration of disasters.[31]

Nor has Congress treated the Philippine Islands as if they were governed by any different principle. It is true that the Islands have been able to support themselves in most respects, but this fact is material only with respect to the *need* for financial assistance from the United States, not with respect to the *power* of the United States to render it if necessary or desirable. Nor is it in any way material to the existence of this power that Congress has chosen to establish a form of local self-government in the Philippine Islands. Local autonomy, as in the Philippines and, to a lesser extent, in Puerto Rico and Hawaii, or direct administration by Congress as in the District of Columbia, is a matter of policy within the discretion of Congress

---

[28] See Act of December 21, 1928, c. 46, 45 Stat. 1067 (Puerto Rico); Act of January 22, 1930, c. 23, 46 Stat. 57 (Same). See also *Annual Report of the Governor of Porto Rico* (1931), p. 86.

[29] See, *e. g.*, Act of January 24, 1923, c. 42, 42 Stat. 1174, 1213 (Hawaii). See also *Report of the Director of the National Park Service* (1932), p. 90.

[30] See, *e. g.*, Act of May 27, 1930, c. 341, 46 Stat. 392, 409 (Alaska and Puerto Rico).

[31] See, *e. g.*, Joint Resolution of December 21, 1928, c. 46, 45 Stat. 1067 (Puerto Rico); Act of March 4, 1929, c. 706, 45 Stat. 1607, 1609 (Same); Act of January 22, 1930, c. 23, 46 Stat. 57 (Same); Act of March 3, 1915, c. 83, 38 Stat. 928, 931 (Samoa); Act of March 4, 1931, c. 522, 46 Stat. 1552, 1577 (Same); Act of January 26, 1903, c. 332, 32 Stat. 780 (Hawaii).

(*Binns* v. *United States*, 194 U. S. 486, 491), and does not affect the *power* of Congress to legislate for a territory (*Asiatic Petroleum Co.* v. *Collector of Customs*, 297 U. S. 666, 670, 671), or to appropriate money for its proper maintenance.

But even with a general policy of having the Islands support themselves, Congress has spent large sums there. Large appropriations have, of course, been made for the government of the Islands,[32] which was at first wholly in the hands of the United States, and at its expense; and later progressively more in the hands of the Filipinos. Apart from those sums, Congress has made specific appropriations of funds for public works and public health,[33] for agriculture,[34] for education, [35] and for the postal service in the Islands.[36] From time

---

[32] See, *e. g.*, Act of June 8, 1898, c. 395, 30 Stat. 437; Act of February 14, 1902, c. 17, 32 Stat. 5, 12; Act of March 3, 1903, c. 1007, 32 Stat. 1083, 1129.

[33] See, *e. g.*, Act of August 29, 1916, c. 416, 39 Stat. 545, 559. The United States Army constructed 13 water systems, which now furnish water to the towns where the systems are located. See *Annual Report of the Governor General* (1935), p. 11.

[34] The Department of Agriculture states that from 1898 through 1934, $80,692 of its funds were spent in the Philippine Islands for research in the study of hemp, maguey, corn, rice, and citrus plants. In addition, under the Sugar Quota Act, through January 31, 1937, rental and benefit payments have been made to sugar producers in the Islands totaling $15,359,534, with administrative expenses of $424,201, a total of $15,783,735. (Earlier figures are given in *Annual Report of the Governor General* (1935), pp. 41–49.)

[35] See, *e. g.*, Act of May 28, 1908, c. 214, 35 Stat. 430, 441.

[36] See, *e. g.*, Act of March 3, 1901, c. 851, 31 Stat. 1099; Act of March 3, 1901, c. 831, 31 Stat. 1010, 1042.

to time money has also been appropriated for a census,[37] for the care of lepers,[38] for aid to Filipino soldiers,[39] and for relief of disasters.[40] And by the Act of July 10, 1935 (c. 376, 49 Stat. 478), the United States offered to assist in the repatriation of native Filipinos by transporting any of them from any part of the United States to Manila.

The clearest authorities, however, in support of the validity of this tax, are a series of statutes which are almost identical with the present Act. In the Act of March 8, 1902 (c. 140, 32 Stat. 54), duties were laid on goods imported from the Philippines into the United States, and a tonnage tax was laid upon vessels transporting goods from these islands to the United States. By Section 4 it was provided that these taxes and duties "shall not be covered into the general fund of the Treasury of the United States, but shall be held as a separate fund and paid into the Treasury of the Philippine Islands, to be used and expended for

---

[37] Act of July 1, 1902, c. 1369, 32 Stat. 691, 693. See also Act of March 3, 1903, c. 1006, 32 Stat. 1031, 1059, and Act of April 27, 1904, c. 1630, 33 Stat. 394, 415.

[38] See, *e. g.*, Act of August 29, 1916, c. 417, 39 Stat. 556, 559; Act of June 11, 1930, c. 463, 46 Stat. 556.

[39] See, *e. g.*, Act of May 28, 1930, c. 348, 46 Stat. 432, 446.

[40] Act of March 3, 1903, c. 1007, 32 Stat. 1083, 1129. The Act states "For the relief of the distress in the Philippine Islands; to be expended under the direction and in the discretion of the Philippine Government * * * three million dollars * * *."

the government and benefit of said islands."[41] See U. S. C., Title 19, Sec. 123 (a).

Similarly, by the Act of August 5, 1909 (c. 6, 36 Stat. 11, 84–85) duties were imposed upon products of the Philippines imported into the United States, and upon products of the United States imported into the Philippines, the proceeds of which were to be paid into the Insular treasury. By this Act also an internal-revenue tax was imposed upon articles from the Philippine Islands, to be paid by internal revenue stamps provided by the Commissioner of Internal Revenue, the tax to be equal to the tax paid upon like articles of domestic manufacture, and the proceeds of which were also to be paid to the Insular treasury. Similar statutes have been in force from then until the present time. See Act of October 3, 1913, c. 16, 38 Stat. 114, 193;

---

[41] A similar act had been passed in April 12, 1900 (c. 191, 31 Stat. 77), with respect to Puerto Rico, earmarking the proceeds for the Puerto Rican Treasury. This act was before the Court in *Downes* v. *Bidwell*, 182 U. S. 244. The Act, which was attacked on the ground of lack of uniformity, was sustained. The point now in issue was not raised, but was apparently conceded by all the members of the Court. Mr. Chief Justice Fuller, speaking for the four dissenting members, stated (p. 355):

> Nobody disputes the power of Congress to lay and collect duties, geographically uniform, and apply the proceeds by a proper appropriation act to the relief of a particular territory, but the destination of the proceeds would not change the source of the power to lay and collect.

Act of September 21, 1922, c. 356, 42 Stat. 858, 935; Act of June 17, 1930, c. 497, 46 Stat. 590, 686 (U. S. C., Title 19, Sec. 1301).[42]

The internal revenue taxes imposed by these latter statutes are indistinguishable from the tax here involved. They are excise taxes upon the use of commodities in this country, paid in this country by citizens of the United States, and appropriated to the benefit of the Insular treasury. . .

We submit that the considered exercise by Congress of the power to appropriate such money for territories as it considered necessary or desirable is very persuasive evidence that the practice is a valid exercise of legislative authority. *United States* v. *Midwest Oil Co.*, 236 U. S. 459, 472, 473. The recent statement of the Court in *United States* v. *Curtiss-Wright Export Corp.*, No. 98, decided December 21, 1936, is apt:

> A legislative practice such as we have here, evidenced not by only occasional instances, but marked by the movement of a steady stream for a century and a half of time, goes a long way in the direction of proving the presence of unassailable ground for the constitutionality of the practice, to be found in the origin and history of the power involved, or in its nature, or in both combined.

---

[42] Large amounts have been collected under these acts and paid into the Philippine Treasury. Under the Act of March 8, 1902, collections had amounted to $3,834,513 by 1930. See United States-Philippine Tariff and Trade Relations (U. S. Tariff Comm., 1931), p. 121. Collections under the Act of 1909, and later similar acts, had amounted to $11,324,594 through 1929. *Ibid.* See also *Report of the Governor General of the Philippine Islands* (1932), p. 35.

Petitioner relies on *Downes* v. *Bidwell*, 182 U. S. 244. From the holding of that case, that the Philippine Islands are not a part of the United States within the meaning of that part of Article I, Section 8, Clause 1, which requires all duties, imports, and excises to be uniform "throughout the United States", petitioner concludes that, similarly, the Islands are not a part of the United States within the meaning of the preceding sentence in the same clause, which allows the United States to levy taxes "for the general welfare of the United States."

Although the Philippine Islands may not be a part of the United States in the sense that the uniformity clause applies to them, nevertheless it does not follow that the possession of territories or dependencies, and their proper government and administration are not for the general welfare of the United States. National possessions are, without question, matters of national rather than local concern. A contrary conclusion would render invalid an appropriation of money for the *purchase* of any possession or territory, for certainly it can be no less a local matter to *acquire* territorial possessions than to expend money for their government or well-being thereafter.

8. THE INSTITUTION OF THE COMMONWEALTH GOVERNMENT IN THE PHILIPPINE ISLANDS HAS NOT CHANGED THE POWER OF CONGRESS TO APPROPRIATE FUNDS TO THE INSULAR TREASURY

Petitioner's third contention is that even though an appropriation for the Philippines might have

been proper prior to November 15, 1935, since that time the Islands have acquired such a degree of autonomy that they should now be treated as a foreign country, and appropriations for their benefit should, therefore, be held invalid.

A brief statement of the various steps in the development of Philippine self-government will serve to clarify the issue. The original government of the Philippines was almost completely in the hands of the United States. As early as possible, however, local government was established. By the Organic Act of 1902 (c. 1369, 32 Stat. 691) a beginning was made, though large powers were reserved to the United States. By the Jones Act of 1916 (c. 416, 39 Stat. 545) the powers of the Filipinos were increased and those of the United States proportionately decreased.

On November 15, 1935, there was inaugurated a constitutional government in the Philippine Islands. This government was established under the Act of Congress of March 24, 1934 (c. 84, 48 Stat. 456; U. S. C., Title 48, Secs. 1231–1247). This Act, which provided for the ultimate grant of independence to the Philippines, was accepted by the Philippine legislature on May 1, 1934. House Document No. 400, 74th Cong., 2d Sess., p. 1. Pursuant to the Act, a Philippine Constitutional Convention was called, and on February 8, 1935, that Convention adopted a Constitution of the Philippines. *Id.*, pp. 5–24. On March 23, 1935, this Constitution was approved by the President of the United

States as substantially in conformity with the Act of March 24, 1934, and on May 14, 1935, the Constitution was approved and adopted by the people of the Philippines at an election. *Id.*, pp. 24, 30.

The Act of March 24, 1934, above referred to, and the Constitution, which expressly incorporates the provisions of that Act, both provide that final and complete withdrawal of the sovereignty of the United States over the Philippine Islands is not to occur for a period of ten years from the date of the inauguration of the constitutional government. During this ten-year period the Government of the Philippine Islands is to be known as the Government of the Commonwealth of the Philippines. By virtue of a proclamation of the President of the United States, this Government of the Commonwealth of the Philippines was inaugurated on November 15, 1935. *Id.*, p. 73.

We do not understand that petitioner claims that the Islands are, during the 10-year Commonwealth Government, a sovereign and independent state. Such a contention would be directly contrary to the express declaration of the Act of Congress authorizing the Constitution of the Commonwealth, and of the Constitution itself. Each of them provides that the United States is to retain sovereignty over the Islands during this period. Act of March 24, 1934 (c. 84, 48 Stat. 456, Secs. 2, 10; U. S. C., Title 48, Secs. 1231–1247). Philippine Constitution, Article XVII, Sec. 1, and Ordinance Appended to the Constitution.

The powers which are retained by the United States under the Act and Constitution demonstrate that the Philippine Islands are not a foreign nation. See Section 2 (a), 6, 7, and 10 (a) of the Act of March 24, 1934; and Section 1 of the Ordinance appended to the Constitution, *infra*, pp. 66–70, House Document No. 400, *supra*, p. 20. Without specifying them in detail, it will be sufficient to point out that during the Commonwealth period the United States is given full or partial power over trade relations, finances and currency, and foreign affairs. Every officer of the Philippine government must take an oath of allegiance to the United States. Decisions of the Supreme Court of the Philippines are reviewable by this Court, and those of the Auditor-General by the President. These provisions are incompatible with the existence of independent sovereignty in the Philippine Islands and indicate conclusively that the Philippines remain subject to the sovereignty of the United States during the ten year period. The grant of legislative power to a territory or possession does not deprive Congress of its power over it. *Asiatic Petroleum Co.* v. *Collector of Customs*, 297 U. S. 666, 671.[43]

[43] Sovereignty has always been taken to mean the absence of external control; *i. e.*, a nation is sovereign whose acts are not subject to the authority of and cannot be rendered void by the will of another. *Ware* v. *Hylton*, 3 Dall. 199, 224; Hall, *International Law* (7th ed.), p. 17; Moore, *International Law Digest* (1906), Vol. I, p. 18. See also *Rex* v. *Jacobus Christian*, South African L. R. (1924) App. Div. 101; Hague Court Reports (2d Ser., Scott), p. 93.

Not only is it clear from the Act and Constitution that the Philippines are still subject to the sovereignty of the United States, but also it is the declared view of the executive branch of the United States Government that during the ten year period the United States retains full rights of sovereignty and that the authority given the Philippines is that of self-government as to matters vested in them by Congress. See Note to the Minister of the Union of South Africa, dated November 15, 1935, *infra*, pp. 70–72." The question of whether the Philippines are still subject to the sovereignty of the United States is a political question, as to which the view of the executive branch of the Government is controlling. *Neely* v. *Henkel* (*No. 1*), 180 U. S. 109, 121; *Jones* v. *United States*, 137 U. S. 202; *Williams* v. *Suffolk Insurance Co.*, 13 Pet. 414; *Cherokee Nation* v. *Georgia*, 5 Pet. 1.

Petitioner is thus forced to the contention that although the Philippines are not sovereign—as petitioner says, in the "international law sense"—they have now achieved such a degree of independence that Congress no longer has the power to appropriate for their benefit. No authority is cited for this conclusion; indeed, the cases in this Court indi-

---

"Cf. Public Statement of President Franklin D. Roosevelt, House Document No. 400, 74th Cong., 2d Sess., p. 24; Message of the Governor-General to the Philippine Legislature in its final session, *id.*, pp. 63–64; Address of the Honorable George H. Dern, Secretary of War, on behalf of President Roosevelt at the inauguration of the Government of the Commonwealth of the Philippines, *id.*, p. 70.

cate that the form of government in the Islands during the time that they are subject to the sovereignty of the United States is wholly irrelevant to the power of Congress to legislate for them. See p. 44, *supra*. *Asiatic Petroleum Co.* v. *Collector of Customs*, 297 U. S. 666, 671.

Petitioner, moreover, is ignoring completely the realities of the situation. There can be no doubt of the desire of the United States to grant complete independence to the Islands as soon as possible. Neither can there be doubt that Congress and the President believed that in granting independence they should take into account not only the political development of the Filipinos but also the ability of the Islands to achieve economic stability.[45] It is manifest from the Independence Act that Congress was greatly concerned with the financial stability of the Islands during the Commonwealth period. Chiefly due to this concern the ten-year preliminary period was provided, during which the Islands might progressively acquire political and economic independence.

---

[45] See, for example, the President's message to Congress in connection with Philippine independence (Cong. Rec., Vol. 78, Part 6, p. 6383): "May I emphasize that while we desire to grant complete independence at the earliest proper moment, to effect this result without allowing sufficient time for necessary political and economic adjustments would be a definite injustice to the people of the Philippine Islands themselves, little short of a denial of independence itself." See also Hacker & Hendrick, *The United States Since 1865* (1936), p. 360 *et seq.*

But in order to achieve the ends which it sought, Congress imposed many specific limitations on the power and ability of the Insular government to raise revenue for its support, particularly during the first few years of the Commonwealth period. Export duties, which may not be levied for five years, are specified at certain amounts, and the proceeds must be expended solely for payment of bonded indebtedness (Act of March 24, 1934, Sec. 6). Import duties are to be collected in the United States upon the leading products of the Philippines in excess of certain quotas (*ibid.*). Acts affecting imports and exports cannot become law until approved by the President of the United States (*ibid.*, Sec. 2 (a) (9)). Property owned by the United States is exempt from all taxation (Sec. 2 (a) (4)). The public debt of the Islands is set at a definite amount by Congress, and, in any event, no loans may be contracted in foreign countries without the assent of the President (Sec. 2 (a) (6)). Other less important provisions might be mentioned. See Sec. 2 (a) (9), (12), and (14).

In addition to these provisions of the Independence Act, the effect of this tax itself also may well have influenced Congress to make this payment to the Insular treasury. The two principal export products of the Philippine Islands are sugar and coconut oil (including copra), in that order. United States-Philippine Trade (U. S. Tariff Commission, 1937), p. 44. In 1935, more land was devoted to coconut production than to the pro-

duction of any other commodity except rice. *Id.*, p. 65. Most of these exports go to the United States. In 1935, out of a total world export of coconut oil of $12,154,003, the United States received $12,004,053, and out of a total world export of copra of $10,987,330, the United States received $9,106,010. *Id.*, p. 47, Table 4. Under these circumstances, the imposition of the present tax, with its inevitable adverse effect upon the position of Philippine coconut oil in relation to competing oils in the United States not taxed, was bound to have a very disturbing effect in the Islands. *Id.*, pp. 154, 155.[46] The coconut industry, with all its lands, equipment, and employees, has, and will continue to be adversely affected, with consequent loss to the Insular government.

Certainly, we submit, Congress might well have felt that the disturbing effect of the limitations in the Independence Act, taken together with the present tax, warranted some relief to the Islands, which were best taken care of by the present appropriation. At the very least, it is not a wholly un-

[46] See Statement of the Department of Agriculture to the Chairman of the Senate Finance Committee (78 Cong. Rec., Pt. 6, pp. 6329, 6331):

> "Reference has just been made to the manner in which our commercial relations with the Philippines would be affected. So great is the importance of the coconut crushing industry (including oil-crushing) in Philippine economy and so great her dependence upon the United States as an outlet, that it can scarcely be doubted that a severe blow would be dealt to the Islands • • •.

reasonable conclusion. Viewed in the light of the plenary power of Congress over the territories (see pp. 39–41, *supra*), we submit that the decision of Congress should not now be overruled by this Court. Cf. *United States* v. *Butler*, 297 U. S. 1, 67.

4. EVEN ASSUMING THAT THE PHILIPPINE ISLANDS ARE A FOREIGN COUNTRY, NEVERTHELESS, THE APPROPRIATION WOULD BE VALID

As we have stated above (pp. 50–53, *supra*), the Philippine Islands are not, in any sense, a foreign country. However, even assuming, *arguendo*, that petitioner could demonstrate in some way that they should be treated as if they were wholly and completely foreign, nevertheless the appropriation here is valid.

In the field of foreign affairs the Federal Government possesses all the powers which are necessary to make the United States a sovereign nation. Cf. *United States* v. *Curtiss-Wright Export Corp.*, No. 98, decided December 21, 1936. Among those powers must be the power to appropriate money for whatever purposes are deemed necessary or desirable. If Congress considers that the duties of the United States under international law require a payment to a foreign government,[47] or if it wishes

[47] See, *e. g.*, Moore, *International Law Digest* (1906), Vol. 6, pp. 809, 811, 885, 837; Treaty with Colombia proclaimed March 30, 1922, 42 Stat. 2122, 2124; Act of February 22, 1883, c. 51, 22 Stat. 421; Note to Norwegian Minister at Washington dated February 26, 1923, *Am. Journal of International Law*, Vol. 17, pp. 287–289; Senate Rept. No. 103, 64th Cong., 1st Sess.

to render assistance to a smaller state, in the interests of stable government,[48] or if any other reason of policy, open or secret,[49] compels Congress to the conclusion that money should be appropriated to a foreign country, directly or indirectly, the judgment of Congress should be conclusive on the necessity for the payment. Indeed, we submit that the matter of appropriation for international reasons should be deemed a political question into which the courts will not inquire. *Mountain Timber Co.* v. *Washington,* 243 U. S. 219, 234; *Terlinden* v. *Ames,* 184 U. S. 270, 288; *Luther* v. *Borden,* 7 How. 1.

B. In any event, the provision authorizing the appropriation to the Philippines of the proceeds of the tax is separable.

We believe that there can be no objection to the provision which earmarks the funds collected under

---

[48] The United States has intervened in several countries, notably Nicaragua, Cuba and Santo Domingo, in the interests of economic and financial stability. See Stuart, *Latin America and the United States* (2d ed. 1929), pp. 266, *et seq.*; Foreign Relations of the United States (1905), p. 343. The United States also aided, with moral, naval, and indirect financial support, in the establishment of Liberia. See S. Doc. No. 60, 61st Cong., 2d Sess., p. 3; Foreign Relations of the United States (1912), pp. 667, *et seq.; id.* (1920), pp. 49–128. In the boundary dispute between Venezuela and Great Britain, Congress appropriated $100,000 to finance an investigation on the part of this country to ascertain the truth with regard to the dispute. Act of December 21, 1895, c. 1, 29 Stat. 1; Act of June 11, 1896, c. 420, 29 Stat. 413, 438.

[49] For example, to aid distressed populations in Europe. Act of March 30, 1920, c. 113, 41 Stat. 548, 549.

this act for payment to the Philippine Islands. However, even in the event that for some reason the provision for payment be held bad, nonetheless we believe the taxing provisions are separable and valid.

The Revenue Act of 1934, when introduced in the House (H. R. 7385, 73d Cong., 2d Sess.), as it was reported out by the Committee on Ways and Means, and as it passed the House contained the tax on coconut oil, but with no provision setting apart the funds for any particular purpose. In that form the bill was reported to the Senate by the Committee on Finance. The provision respecting payment was added on the floor of the Senate (Cong. Record, Vol. 78, Part 6, pp. 6308–6325, 6380–6389), and the House receded in conference.

The separability provision of the Revenue Act (Sec. 802, *infra*, p. 64) of course creates a presumption that the provisions are separable. *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 312. To overcome that presumption there must be considerations which establish "the clear probability that the invalid parts being eliminated, the legislature would not have been satisfied with what remains." *Williams* v. *Standard Oil Co.*, 278 U. S. 235, 241; *Utah Power & Light Co.* v. *Pfost*, 286 U. S. 165, 184–185. Here, on the contrary, the evidence indicates that the provision for payment to the Philippines was entirely incidental. True, the provision may have been inserted because Congress believed that continuation of stable government on the Islands re-

quired financial assistance from Congress, or for other reasons, but *non constat* that this financial assistance could be rendered only in this fashion. Indeed, the proviso contained in Section 602½ (a), which would stop the payment to the Philippines upon the payment of subsidies to coconut growers, but would not stop the tax, indicates that Congress does not consider the tax and the appropriation inseparable. We submit, therefore, that if this incidental appropriation be held invalid, it should be held separable and the tax should stand. *Field* v. *Clark*, 143 U. S. 649; *National Life Ins. Co.* v. *United States*, 277 U. S. 508; *Head Money Cases*, 112 U. S. 580, 599.

United States v. *Butler*, 297 U. S. 1, is not authority to the contrary. There the tax commenced or ceased when the payments commenced or ceased. The sole object of the legislation was held to be the securing by benefit payments of restoration of purchasing power in violation of the Tenth Amendment. If the use of payments for that purpose was forbidden, it was clear that Congress would not have imposed the tax. Here, however, Congress desired the tax for purposes other than the raising of revenues for the Philippine Islands, as is illustrated by the fact that taxes were imposed upon other oils the proceeds of which were carried into the general revenues.

We submit, therefore, that irrespective of the validity of the provision in the Act directing that the funds collected from the processing of Philip-

pine coconut oil be held for the Treasury of the Philippine Islands, the tax on the processing of Philippine coconut oil itself is valid.

CONCLUSION

Wherefore, it is respectfully submitted that the decision below should be affirmed.

STANLEY REED,
Solicitor General.
ROBERT H. JACKSON,
Assistant Attorney General.
JAMES L. MORRIS,
Assistant Attorney General.
SEWALL KEY,
F. A. LE SOURD,
Special Assistants to the Attorney General.
CHARLES A. HORSKY,
Attorney.

MARCH 1937.

APPENDIX

Revenue Act of 1934, c. 277, 48 Stat. 680:

SEC. 602½. PROCESSING TAX ON CERTAIN OILS.

(a) There is hereby imposed upon the first domestic processing of coconut oil, sesame oil, palm oil, palm kernal[1] oil, or sunflower oil, or of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, a tax of 3 cents per pound, to be paid by the processor. There is hereby imposed (in addition to the tax imposed by the preceding sentence) a tax of 2 cents per pound, to be paid by the processor upon the first domestic processing of coconut oil or of any combination or mixture containing a substantial quantity of coconut oil with respect to which oil there has been no previous first domestic processing, except that the tax imposed by this sentence shall not apply when it is established, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that such coconut oil (whether or not contained in such a combination or mixture), (A) is wholly the production of the Philippine Islands or any other possession of the United States, or (B) was produced wholly from materials the growth or production of the Philippine Islands or any other possession of the United States, or (C) was brought into the United States on or before the 30th day after the date of the enactment

[1] So in original.

of this Act, or produced from materials brought into the United States on or before the 30th day after the date of the enactment of this Act, or (D) was purchased under a bona fide contract entered into prior to April 26, 1934, or produced from materials purchased under a bona fide contract entered into prior to April 26, 1934. All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Phillipine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection. For the purposes of this section the term "First domestic processing" means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate.

(b) Each processor required to pay the tax imposed by this section shall make monthly returns under oath in duplicate and pay the tax to the collector of internal revenue for the district in which is located his principal place of business, or if he has no principal place of business in the United States, then to the collector of internal revenue at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury,

may by regulations prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum per month from the time the tax became due until paid.

(c) Subject to such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe, any person who has sold to a State, or a political subdivision thereof, for use in the exercise of an essential governmental function any article containing any such oil, combination, or mixture, upon the processing of which a tax has been paid under this section shall be entitled to a credit or refund of the tax paid with respect to the quantity of such oil, combination, or mixture contained in such article.

(d) Upon the exportation to any foreign country or to a possession of the United States of any article wholly or in chief value of an article with respect to the processing of which a tax has been paid under this section, the exporter thereof shall be entitled to a refund of the amount of such tax. Upon the giving of bond satisfactory to the Secretary for faithful observance of the provisions of this section requiring the payment of taxes, any person shall be entitled, without payment of the tax, to process for such exportation any article with respect to which a tax is imposed by this section.

(e) If (1) any person has, prior to January 26, 1934, made a bona fide contract for the sale on or after the effective date of this section of any article wholly or in chief value of an article with respect to which a tax is

imposed by this section or of any article with respect to which a tax is imposed by this subsection, and if (2) such contract does not permit the addition to the amount to be paid thereunder of the whole of such tax, then (unless the contract expressly prohibits such addition) the vendee shall pay so much of the tax as is not permitted to be added to the contract price. Taxes payable by the vendee shall be paid to the vendor at the time the sale is consummated and shall be returned and paid to the United States by the vendor in the same manner as other taxes under this section. In case of failure or refusal by the vendee to pay such taxes to the vendor, the vendor shall report the facts to the Commissioner, who shall cause collection of such taxes to be made from the vendee.

(f) All provisions of law (including penalties) applicable in respect of taxes imposed by section 600 of the Revenue Act of 1926, shall, insofar as applicable and not inconsistent with this section, be applicable in respect of the taxes imposed by this section.

(g) All collections except as provided in subsection (a) under this section shall, notwithstanding any other provisions of law, be covered into the general fund of the Treasury of the United States. (U. S. C. Title 26, Sec. 999.)

SEC. 802. SEPARABILITY CLAUSE.

If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

Constitution of the Philippines, adopted by the Philippine Constitutional Convention at the City of Manila, Philippine Islands, February 8, 1935 (adopted by the People of the Philippines, May 14, 1935):

ARTICLE XVI. SPECIAL PROVISIONS EFFECTIVE UPON THE PROCLAMATION OF THE INDEPENDENCE OF THE PHILIPPINES.

SECTION 1. Upon the proclamation of the President of the United States recognizing the independence of the Philippines—

(1) The property rights of the United States and the Philippines shall be promptly adjusted and settled, and all existing property rights of citizens or corporations of the United States shall be acknowledged, respected, and safeguarded to the same extent as property rights of citizens of the Philippines.

* * * * *

(3) The debts and liabilities of the Philippines, its provinces, cities, municipalities, and instrumentalities, which shall be valid and subsisting at the time of the final and complete withdrawal of the sovereignty of the United States, shall be assumed by the free and independent government of the Philippines; and where bonds have been issued under authority of an Act of Congress of the United States by the Philippine Islands, or any province, city, or municipality therein, the Government of the Philippines will make adequate provision for the necessary funds for the payment of interest and principal, and such obligations shall be a first lien on all taxes collected.

(4) The Government of the Philippines will assume all continuing obligations of the United States under the Treaty of Peace

with Spain ceding the Philippine Islands to the United States.

(5) The Government of the Philippines will embody the foregoing provisions of this article (except subsection (2)) in a treaty with the United States.

ARTICLE XVII. THE COMMONWEALTH AND THE REPUBLIC.

SECTION 1. The government established by this Constitution shall be known as the Commonwealth of the Philippines. Upon the final and complete withdrawal of the sovereignty of the United States and the proclamation of Philippine independence, the Commonwealth of the Philippines shall thenceforth be known as the Republic of the Philippines.

ORDINANCE APPENDED TO THE CONSTITUTION

SECTION 1. Notwithstanding the provisions of the foregoing Constitution, pending the final and complete withdrawal of the sovereignty of the United States over the Philippines—

(1) All citizens of the Philippines shall owe allegiance to the United States.

(2) Every officer of the Government of the Commonwealth of the Philippines shall, before entering upon the discharge of his duties, take and subscribe an oath of office, declaring, among other things, that he recognizes and accepts the supreme authority of and will maintain true faith and allegiance to the United States.

(3) Absolute toleration of religious sentiment shall be secured and no inhabitant or religious organization shall be molested in person or property on account of religious belief or mode of worship.

(4) Property owned by the United States, cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation.

(5) Trade relations between the Philippines and the United States shall be upon the basis prescribed in section six of Public Act Numbered One hundred and twenty-seven of the Congress of the United States approved March twenty-four, nineteen hundred and thirty-four.

(6) The public debt of the Philippines and its subordinate branches shall not exceed limits now or hereafter fixed by the Congress of the United States, and no loans shall be contracted in foreign countries without the approval of the President of the United States.

(7) The debts, liabilities, and obligations of the present Government of the Philippine Islands, its provinces, municipalities, and instrumentalities, valid and subsisting at the time of the adoption of the Constitution, shall be assumed and paid by the Government of the Commonwealth of the Philippines.

(8) The Government of the Commonwealth of the Philippines shall establish and maintain an adequate system of public schools, primarily conducted in the English language.

(9) Acts affecting currency, coinage, imports, exports, and immigration shall not become law until approved by the President of the United States.

(10) Foreign affairs shall be under the direct supervision and control of the United States.

(11) All acts passed by the National Assembly of the Commonwealth of the Philippines shall be reported to the Congress of the United States.

(12) The Philippines recognizes the right of the United States to expropriate property for public uses, to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President of the United States, to call into the service of such armed forces all military forces organized by the Government of the Commonwealth of the Philippines.

(13) The decisions of the courts of the Philippines shall be subject to review by the Supreme Court of the United States as now provided by law, and such review shall also extend to all cases involving the Constitution of the Philippines.

(14) Appeals from decisions of the Auditor General may be taken to the President of the United States.

(15) The United States may, by Presidential proclamation, exercise the right to intervene for the preservation of the Government of the Commonwealth of the Philippines and for the maintenance of the Government as provided in the Constitution thereof, and for the protection of life, property, and individual liberty and for the discharge of Government obligations under and in accordance with the provisions of the Constitution.

(16) The authority of the United States High Commissioner to the Government of the Commonwealth of the Philippines as provided in Public Act Numbered One hundred and twenty-seven of the Congress of the United States approved March twenty-four, nineteen hundred and thirty-four, is hereby recognized.

(17) Citizens and corporations of the United States shall enjoy in the Commonwealth of the Philippines all the civil rights of the citizens and corporations, respectively, thereof.

(18) Every duly adopted amendment to the Constitution of the Philippines shall be submitted to the President of the United States for approval. If the President approve the amendment or if the President fail to disapprove such amendment within six months from the time of its submission, the amendment shall take effect as a part of such Constitution.

(19) The President of the United States shall have authority to suspend the taking effect of or the operation of any law, contract, or executive order of the Government of the Commonwealth of the Philippines, which in his judgment will result in a failure of the Government of the Commonwealth of the Philippines to fulfill its contracts, or to meet its bonded indebtedness and interest thereon or to provide for its sinking funds, or which seems likely to impair the reserves for the protection of the currency of the Philippines, or which in his judgment will violate international obligations of the United States.

(20) The President of the Commonwealth of the Philippines shall make an annual report to the President and Congress of the United States of the proceedings and operations of the Government of the Commonwealth of the Philippines and shall make such other reports as the President or Congress may request.

SEC. 2. Pending the final and complete withdrawal of the sovereignty of the United States over the Philippines, there shall be a

Resident Commissioner of the Philippines to the United States who shall be appointed by the President of the Commonwealth of the Philippines with the consent of the Commission on Appointments. The powers and duties of the Resident Commissioner shall be as provided in section seven, paragraph five of Public Act Numbered One hundred and twenty-seven of the Congress of the United States, approved March twenty-four, nineteen hundred and thirty-four, together with such other duties as the National Assembly may determine. The qualifications, compensation, and expenses of the Resident Commissioner shall be fixed by law.

SEC. 3. All other provisions of Public Act Numbered One hundred and twenty-seven of the Congress of the United States, approved March twenty-four, nineteen hundred and thirty-four, applicable to the Government of the Commonwealth of the Philippines are hereby made a part of this Ordinance as if such provisions were expressly inserted herein.

NOTE ADDRESSED TO THE MINISTER OF THE UNION OF SOUTH AFRICA DATED NOVEMBER 15, 1935

The Secretary of State presents his compliments to the Minister of the Union of South Africa and acknowledges the receipt of Mr. Close's note dated November 5, 1935, with which there was transmitted a copy of a letter from the South African Department of Customs and Excises in regard to the classification of the Philippine Islands for customs and statistical purposes.

The Secretary of State encloses a copy of an act (H. R. 8573, 73d Congress) entitled "To provide for the complete independence of the Philippine Islands, to provide for the

adoption of a constitution and a form of government for the Philippine Islands, and for other purposes", and approved March 24, 1934.

The Act provides *inter alia* for the formulation and drafting of a constitution for the government of the Commonwealth of the Philippine Islands, "which shall exercise jurisdiction over all the territory ceded to the United States by the treaty of peace concluded between the United States and Spain on the 10th day of December 1898."

A copy of the Constitution of the Philippines, as adopted by the Philippine Constitutional Convention on February 8, 1935, and as certified by the President on March 23, 1935, is also enclosed. Article XVII of the Constitution provides:

"The government established by this Constitution shall be known as the Commonwealth of the Philippines. Upon the final and complete withdrawal of the sovereignty of the United States and the proclamation of Philippine independence, the Commonwealth of the Philippines shall thenceforth be known as the Republic of the Philippines."

The Commonwealth of the Philippines, referred to in the section above quoted of the Constitution, is to be inaugurated on November 15, 1935, and, as provided by Section 10 (a) of the Act above described, on the 4th day of July immediately following the expiration of a period of ten years from the date of the inauguration of the new government, "all right of possession, supervision, jurisdiction, control, or sovereignty then existing and exercised by the United States in and over the territory and people of the Philippine Islands", is to be withdrawn and

surrendered by proclamation of the President of the United States.

Until such action shall have been taken by the President, sovereignty over the Philippine Islands rests with the United States.

Enclosures:

Copy of H. R. 8573, 73d Congress.

Copy of the Constitution of the Philippines.

DEPARTMENT OF STATE,

Washington, November 15, 1935.

811B.01/261

U. S. GOVERNMENT PRINTING OFFICE: 1937